CLERK'S COPY.

Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 651

FRANK HAGUE, INDIVIDUALLY AND AS MAYOR OF JERSEY CITY, ET AL., ETC., PETITIONERS,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 6, 1939.

CERTIORARI GRANTED FEBRUARY 6, 1939.

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TO ALL WORKERS IN HUDSON COUNTY

Millions of workers all over the United States, with the help of the C. I. O., have ended their economic slavery and become free men and women again.

YOU CAN DO IT, TOO!

Here at last is the great chance for every worker in Hudson County – the biggest opportunity in your lifetime – the opportunity to organize for better wages, for security of your job, and for better life under the protection of a C. I. O. contract.

Don't forget! Your boss CANNOT PREVENT you from joining the C. I. O.

YOU CANNOT BE FIRED!

for joining a union. You have the legal right under the Wagner Labor Act, upheld by the Supreme Court of the United States, to choose your own labor union to represent you in collective bargaining.

ARE YOU — —

Satisfied with LOW WAGES
Contented with LONG HOURS
Working without PAID VACATIONS

?

NOW is the time to ACT!

Do You Want Shorter Hours, More Pay, Better Working Conditions and Paid Vacations **?**

It's Wise—Organize! Join the C. I. O!

Come to this Meeting and Find Out How

Friday, December 3—8 P. M.

PEOPLE'S CENTER

160 MERCER STREET, JERSEY CITY, N. J.

NATIONALLY KNOWN SPEAKERS

MICHAEL QUILL
President of the Transport Workers Union

HARRY WENDRICH
Representative, Printing Pressmen's Union

ALLEN HAYWOOD
C. I. O. Director for New York

WILLIAM J. CARNEY
C. I. O. Director for New Jersey

ADMISSION FREE!

PLAINTIFFS' EXHIBIT "P-2."

[Unofficial stenographic transcript of proceedings before Judge Botti in the First Criminal Court in the City of Jersey City on November 29, 1937, at the trial of Neil Brant, Jule Nydes, Fred Huszer, Joseph Kish, Joseph Mikolyk, Albert Pezzati, and Frank Degeranimo, charged with "Distribution of Circulars" on November 29, 1937. The Defendants were found guilty and sentenced to five (5) days in the County Jail. Judge Botti refused to swear a stenographer, who was a competent court reporter.]

PLAINTIFFS' EXHIBIT "P-3."

[Unofficial stenographic transcript of proceedings before Judge Botti in the First Criminal Court in the City of Jersey City on November 29, 1937, in the case entitled: State of New Jersey, Plaintiff vs. Dominick Spino, et al., Defendants; in which six persons, affiliated with the C. I. O. were charged with unlawful assembly on November 29, 1937, in connection with circular distribution, (circulars printed as Exhibit P-1) and held for the Grand Jury. Judge Botti refused to swear a stenographer, who was a competent court reporter.]

PLAINTIFFS' EXHIBIT "P-4."

5

SUPREME COURT BANS ANTI-LEAFLET LAWS

In a unanimous opinion delivered last Monday, the U.S. Supreme Court ruled that an ordinance requiring a license for leaflet distribution was:

> "invalid on its face. Whatever the motive which induced its adoption . . . it strikes at the very foundation of the freedom of the press . . . "

THIS MEANS THE JERSEY CITY ORDINANCE AS WELL AS SIMILAR ORDINANCES ALL OVER THE COUNTRY.

Repeating arguments advanced by the Workers Defense League in its "friend of the court" brief, the Supreme Court's decision said:

> "The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly prove."

POLICE DEFY SUPREME COURT

Yesterday, March 29th, in accordance with the decision of the Supreme Court which rendered all anti-leaflet laws unconstitutional, attempts were made to distribute leaflets announcing a meeting at which Norman Thomas was to speak. The police illegally seized the leaflets from the girl distributor, and handled her roughly. One of the Workers Defense League observers who complained to the police officer about the way she was handled, was arrested and taken to the Montgomery St. Precinct where he was released by Captain Peter Quail.

Captain Quail told the Workers Defense League representative "We're enforcing the Jersey City ordinance, not the Constitution." Captain Quail further said that he had ordered the police to continue seizing leaflets from people who tried to distribute them.

THIS IS ANARCHY, NOT LAW AND ORDER

Such action by the police is anarchy, not law and order. The Workers Defense League of Hudson County pledges itself to see the end of police lawlessness in Jersey City.

Workers, as well as all other people, today and from now on have the unqualified right to distribute pamphlets and handbills in Jersey City. The Workers Defense League will help protect workers who exercise this unqualified right.

WORKERS DEFENSE LEAGUE OF HUDSON COUNTY
Darrell O'Neill, Secretary
716 Bergen Avenue
Jersey City, N.J.

PLAINTIFFS' EXHIBIT "P-5."

125 110 $1.25
125 (After 2:30) • plus -

FAIRMOUNT HOTEL
JERSEY CITY, N. J.

WILLIAM K. MOSER
MANAGER

TELEPHONE
BERGEN 3-0962

PLAINTIFFS' EXHIBIT "P-7."

7

The Catholic Worker

EDMUND CAMPION was proscribed from England and had to live in exile. For nine years he studied abroad, preparing himself to be a priest. When at last he was ready to go back to help his oppressed people, he had to hide from the authorities and steal into the country in disguise.

Always working under cover, he had to encourage the people, organize them, and give them the Sacraments. In many places he escaped being caught just in time, only to reappear somewhere else, in disguise, but always with the same enthusiasm and energy.

When he was caught finally and going to the gallows to be hanged, he preached a last sermon with the halter already around his neck. He was even more cheerful than usual, and joked so much in his sermon that the people could not help laughing through their tears. The manner of his life and the manner of his death were wonderful examples to make the people understand his ardent convictions.

THE CATHOLIC WORKER, always an ardent champion of civil rights, protests mostvehemently the consistent violation of those rights in Jersey City. We deeply deplore the actions and statements of the Catholic War Veterans. We condemn most partily the framing of Jeff Burkitt and the unAmerican treatment, accorded Norman Thomas. Furthermore, we pledge ourselves to being in the fight to stay until Hagueism has disappeared and civil rights restored in Jersey City.

Issued by

THE CATHOLIC WORKER
115 Mott Street
New York City

PLAINTIFFS' EXHIBIT "P-9"

PATRIOTIC RALLY

Under the auspices of a Committee representing all the Civic, Veteran, Fraternal, Labor and Business Organizations in Jersey City.

You are invited with all your friends to attend a Monster Demonstration at the Jersey City Armory at 7:45 o'clock, Thursday evening, January 6, 1938, and by your presence register your endorsement of Mayor Frank Hague's attitude against the invasion of Jersey City by Communist agents and the noted Red Leaders of this Country.

Stand by Mayor Hague in his determination to keep out this un-American group, whose purpose is to destroy our Government of law and order and tear down our American institutions.

THIS IS YOUR FIGHT. Your presence is essential.

Help us make this an impressive demonstration. Whether you are inside or outside the Armory, please stay until the Rally is over.

ROBERT S. CARMICHAEL,
Chairman of Committee.

PLAINTIFFS' EXHIBIT "P-10."

For Identification.

(By agreement of counsel to be considered in evidence.)

[A compilation of permits granted for outdoor meetings in streets and public places in Jersey City from 1913 to 1938, containing several thousand permits for such meetings to various persons and organizations, including the Democratic Party, the Socialist Party, the Progressive Party, the Anti-Socialist Party, Progressive Democratic Party; Republican Party; Suffragettes; Progressive Republican Party; Brensinger, Fagen, Hague, Moore and O'Brien Campaign Committee; Citizens Labor Party; Hague Democratic Association; Socialist Labor Party; Communist Party. This compilation also indicates that two applications were denied—one being an application of the United Front Anti-War Committee dated August 1, 1932, and the other application of the Scottsboro Committee, dated August 26, 1933.]

PLAINTIFFS' EXHIBIT "P-11."

For Identification.

(By agreement of counsel to be considered in evidence.)

[This Exhibit contains a compilation of the permits for street meetings issued to various religious groups and associations from 1932 to 1938.]

PLAINTIFFS' EXHIBIT "P-12."

[Correspondence between Samuel L. Rothbard, on behalf of American Civil Liberties Union, and Daniel Casey, copies of which correspondence are annexed to Bill of Complaint and form a part of Schedule "F".]

PLAINTIFFS' EXHIBIT "P-13."

[Correspondence between Spaulding Frazer for Hudson Co. Organizing Committee of the C. I. O. and Daniel Casey, copies of which correspondence are annexed to Bill of Complaint and also form a part of Schedule "F".] Exhibit P-13, also includes a letter from Spaulding Frazer to Daniel Casey, dated January 3, 1938, as follows:

RECEIVED
Time 9.50 am
Date Jan. 4, 1938
DEPT. PUBLIC SAFETY
DIRECTOR'S OFFICE

SPAULDING FRAZER
744 Broad Street
Newark, New Jersey

January 3, 1938.

Honorable Daniel J. Casey,
Director of Public Safety,
Jersey City, New Jersey.

Dear Sir:

I wish to thank you for your very frank letter of December 30th. The fact that I received it the day after the last date for which permission was asked, was, as you doubtless thought, of no significance in view of your letter of December 27th, in which you informed us of your intended "investigation of all the facts and circumstances pertinent to" my application. With the passing of the meeting date, I had construed silence as dissent.

Your letter, however, is very illuminating as to the nature of the investigation undertaken by you. Such an investigation concededly takes time. Even a perfectly functioning organization requires at least one day to foment a mass-meeting. I congratulate you on the apparent success of the demonstration, if you consider the accomplishment important. I do not. It solves none of the problems confronting us, and as I see it, points with pride to the apparent

inability of Jersey City authorities, with the largest per capita police force in the country at their disposal, to maintain order against the threatened mob violence of unruly elements who threaten direct action if the authorities protect, in the exercise of their constitutional rights, persons in whose opinions the mob does not concur.

The purpose of the proposed meeting was to petition your Commission (1) to modify certain city ordinances, and (2) to prevent owners of halls from intimidation by your police officers in the rental of their halls. That your supporters disagree with the opinions of Mr. Roger N. Baldwin, or the economic philosophy of the Committee for Industrial Organization seems beside the point. What seems, however, very important is that you, a public officer, sworn to enforce the law, should admit your incapacity to do so and your fear that should you attempt it "veterans" would turn Jersey City over to the mercies of a riotous mob. Nowhere do I see any statement that the applying petitioners or their supporters will be disorderly, but it is clear from the voluminous matter attached to your letter in justification and from the reports of the "mass-meeting" that the disorderly conduct feared would have been on the part of your supporters. Really, Mr. Commissioner, you should have them in better control. Your Mayor has recently spoken of his "efforts to obstruct this lawless element whose only effort is to crush by terrorism", and of a "campaign of violence and terrorism". Is it possible he had prophetically in mind the "mass-meeting" of Tuesday? Or is it that you tolerate mobs instructed to do your bidding and heroically suppress and oppress by public and private force all individuals who disagree with or oppose you? This, to my mind, is the issue involved, not what may be the opinions, philosophical or economic, of those who are brave enough in Jersey City to disagree with you, or shall I say more realistically, with Mayor Hague. On this issue I am ready to join with you.

Very truly yours,

SPAULDING FRAZER

PLAINTIFFS' EXHIBITS "P-14" AND "P-15."

[Certain permits for street meetings—some on a printed permit form—others of informal character.]

ANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

WESTERN UNION (33)

SYMBOLS
DL = Day Letter
NM = Night Message
NL = Night Letter
LC = Deferred Cable
NLT = Cable Night Letter

R. B. WHITE, PRESIDENT — NEWCOMB CARLTON, CHAIRMAN OF THE BOARD

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

RECEIVED
TIME 10 A.M.
May 10 1938
DEPT. PUBLIC SAFETY
DIRECTOR'S OFFICE

Received at 79 Montgomery St., Jersey City, N. J.

NK56 37/43 1 EXTRA=PRINCETON NJ 10 1002A

DANIEL CASEY=

ROOM 27 CITY HALL JY=

WE REQUEST PERMIT FOR SPEECH BY SENATOR WILLIAM BORAH SPONSORED BY AMERICAN WHIG CLIOSOPHIC SOCIETY OF PRINCETON UNIVERSITY. DATE THURSDAY EVENING MAY 12 AT 9 PM JOURNAL SQUARE. PLEASE WIRE REPLY BY WESTERNUNION COLLECT AS SOON AS POSSIBLE TO WHIG HALL PRINCETON=.

J HARLAN CLEVELAND VICEPRESIDENT AMERICAN WHIG CLIOSOPHIC SOCIETY.

12 9 PM.

THE QUICKEST, SUREST AND SAFEST WAY TO SEND MONEY IS BY TELEGRAPH OR CABLE

PLAINTIFFS' EXHIBIT "P-16."

13

May 10, 1938

Mr. J. Harlan Cleveland, Vice-President,
American Whig-Cliosophic Society
Princeton, New Jersey

Dear Sir:

I have your telegram in which you request a permit, I assume for an outdoor meeting, to be sponsored by your society for Thursday evening, May 12, 1938, at 9.00 p. m., at Journal Square, Jersey City.

I have made an investigation of the facts and circumstances pertinent to this application and believe it to be proper to refuse the issuance thereof. Your request for a permit therefore is denied on the ground that the said meeting would tend to create disturbance and disorderly assemblage.

Yours truly,

Director

PLAINTIFFS' EXHIBIT "P-17."

[A business card of William M. Callahan, Managing Editor of Catholic Worker and correspondence.]

RECEIVED
Time 3.00 pm.
Date Tues. May 3/38
DEPT. PUBLIC SAFETY
DIRECTOR'S OFFICE
May 3, 1938

Hon. Daniel Casey,
Comm. of Public Safety,
Jersey City, N. J.

Sir:

I hereby respectfully apply for a permit to hold an open air meeting in Journal Square at 7:30 P. M. on Friday, May 6th. Should there be any objection to my choice of place, Bergen Sq., where there is no traffic problem, would be acceptable.

Please consider this also as a request for either place at the same time on May 14th, both requests to be considered separately.

Thanking you in advance for your kind consideration, I remain

Respectfully,

WILLIAM M. CALLAHAN
William M. Callahan,
Managing Editor,
THE CATHOLIC WORKER
115 Mott St.,
N. Y. C.

P. S. The purpose of the meetings will be educational, explaining the Papal Encyclicals.

May 4, 1938

Mr. William Callahan,
Managing Editor,
The Catholic Worker,
115 Mott St., New York City.

Dear Sir:

Your application to hold an open air meeting in Jersey City on Friday evening, May 6th, received.

It is my wish that you present your application in person and list those who are to address the meeting; also supply me with a list, if any, of the officers or executives of the newspaper that you say you edit, so that I may investigate as to who you represent and as to the character of these speakers.

Very truly yours,

Daniel Casey,
Director.

PLAINTIFFS' EXHIBIT "P-18."

For Identification.

[Twelve (12) letters from Veterans, dated May 1938, all substantially identical, the following being a sample:]

Jersey City,
May 19–1938

Hon. Daniel Casey
Commissioner of Public Safety
Jersey City N. J.

Dear Sir:

Allow me as a World War Veteran to congratulate you on the methods you are using to combat the so called radical movement being launched in our city.

Be assured you have my heartiest support and co-operation in anything you do to keep Jersey City just as it is at the present time.

Respectfully

Harry Mariotta
Gen. Wheeler Post #62 V. F. W.

PLAINTIFFS' EXHIBIT "P-19."

For Identification.

[Communications sent to the Mayor of Jersey City from the following:

Jersey City Real Estate Board, dated Dec. 15, 1937, approving the action taken by Mayor Hague and the Commissioners of Jersey City in their handling of conditions arising from the C. I. O. and Communist Party controversy in Jersey City and requesting that the Mayor and Commissioners continue their protective measures.

Ladies of the Grand Army of the Republic, dated December 16, 1937, supporting the Mayor in his work against Communism.

Associated Sons of Poland, dated Dec. 31, 1937, Association approving the stand taken by the Chamber of Commerce against all subversive and Communistic movements.

Jersey City Chamber of Commerce, dated Dec. 23, 1937 which decided to go on record in the Labor controversy involving Jersey City, and expressing its opposition to elements from the outside whose manifest purpose is to illegally disturb, hamper and destroy the peaceful relations which exist in the local industrial life of Jersey City, and approving the conduct of Mayor Hague in forcefully and courageously resisting them.

Catholic War Veterans, dated Dec. 22, 1937, approving the stand of Mayor Hague against Radicals. to which resolutions were annexed.

Jersey City Lions' Club, dated Dec. 16, 1937, submitting a resolution reciting the criticism by non-residents of New Jersey of Mayor Hague and the City Administration for their attitude toward certain so-

called labor organizations, stating that the labor situation is a local matter; that the Club feels that Mayor Hague and the City Commissioners are endeavoring to prevent disorder and forestall riots and lawlessness, whereupon it is resolved that the Lions' Club express its confidence in Mayor Hague and the City Commissioners to handle the situation in fairness to all concerned without interference by non-residents.

Jersey City Post No. 37, dated Dec. 16, 1937, offering to lend its assistance in supporting the Mayor in his organized fight against Communism, and his determination to keep the exploitation of Communism out of Jersey City.

Desmond Post No. 172 (undated) which passed a resolution offering to support the governing officials of Jersey City in their refusal to permit any person or persons to conduct meetings of any kind, when such person or persons have given succor to known Communists who have preached and spread Communistic doctrines and who, by such actions have been "un-American".

PLAINTIFFS' EXHIBIT "P-20."

For Identification.

[A batch of protests including a typewritten petition, a copy of which is printed below, to which 158 separate sheets have been stapled, each of the said 158 sheets are partially or completely filled upon one side with signatures of various individuals, and in one or two instances also have signatures on the reverse side of the sheet, containing in all several thousand signatures.]

"To: The Honorable Daniel Casey
Director of Public Safety of the City of Jersey City.

Sir:

We, the undersigned, Veterans of the World War and the Spanish-American War, are informed through the public press that there has been presented to you a request or application for leave to hold an outdoor meeting at Journal Square, Jersey City, New Jersey, on Saturday, April 30, 1938.

We vigorously protest against the granting by you of permission to hold this meeting, or any future meetings of a similar nature at Journal Square.

In 1898 and 1917 we left our homes and loved ones and offered our lives for the preservation of our Government and its institutions. Every right is therefore ours to uphold the principles for which we fought. We heartily support and defend the principles of free speech and public assemblage but we most vigorously oppose the abuse of such rights as a cloak for radicalism supported by professional agitators whose purposes are contrary to American principles of good government and whose methods lead to public disorder and breaches of the peace.

This was fully demonstrated a short time ago when an attempt was made to hold a public meeting at Jour-

nal Square without a permit. The facts and circumstances concerning the disorder thus created have been fully mentioned in the public press and need not be repeated here.

At this time groups of people such as these can serve no useful purpose by their assemblage. There is no political contest pending in Jersey City, nor is there any matter to be placed before the people concerning its government.

We, who have pledged ourselves to uphold and defend the Constitutions of the United States of America and the State of New Jersey, and to carry on in time of peace as we did in time of war, respectfully request that this and future applications of this kind be denied."

PLAINTIFFS' EXHIBIT "P-21."

For Identification.

[Letter of Jersey City Real Estate Board, dated December 30, 1937, approving Mayor Hague's stand and promising attendance at Rally at Jersey City Armory on January 6, 1938.]

PLAINTIFFS' EXHIBIT "P-22."

For Identification.

[Resolution by the Italian Community Center to attend the protest meeting at the Armory on January 6, 1938, and endorse Mayor Hague's stand.]

PLAINTIFFS' EXHIBIT "P-23."

For Identification.

[Letter dated December 29, 1937, from American War Veterans of Italian extraction, commending the Mayor on his policy of keeping the Communists out.]

PLAINTIFFS' EXHIBIT "P-24."

For Identification.

[Undated letter from Hudson County Post No. 2 of the 29th Division Association of Jersey City, urging that the Radicals be kept out.]

PLAINTIFF'S EXHIBIT "P-25."

For Identification.

[Resolution of Grand Jury Association of Hudson County: "That the brave stand of Honorable Frank Hague, Mayor of Jersey City, in upholding the Constitution guaranteeing freedom and liberty to the people is commended and endorsed."]

PLAINTIFFS' EXHIBIT "P-26."

For Identification.

[A number of additional protests, one of which is in the form of a resolution signed by Hugh A. Kelly, as Chairman of the Veterans' Law and Order Committee, which is stated to have met May 19, 1938, and which requests that for the present no permits be granted to any person, organization, body or association of known anti-American tendencies or vain-glory seekers to hold public meetings in the public streets, parks or public buildings in Jersey City. "This request is made with full knowledge of the ability of the Jersey City Police Department to properly handle any public disturbances; but we do suggest that prevention of trouble is better than quelling it after it is started."]

PLAINTIFFS' EXHIBIT "P-27."

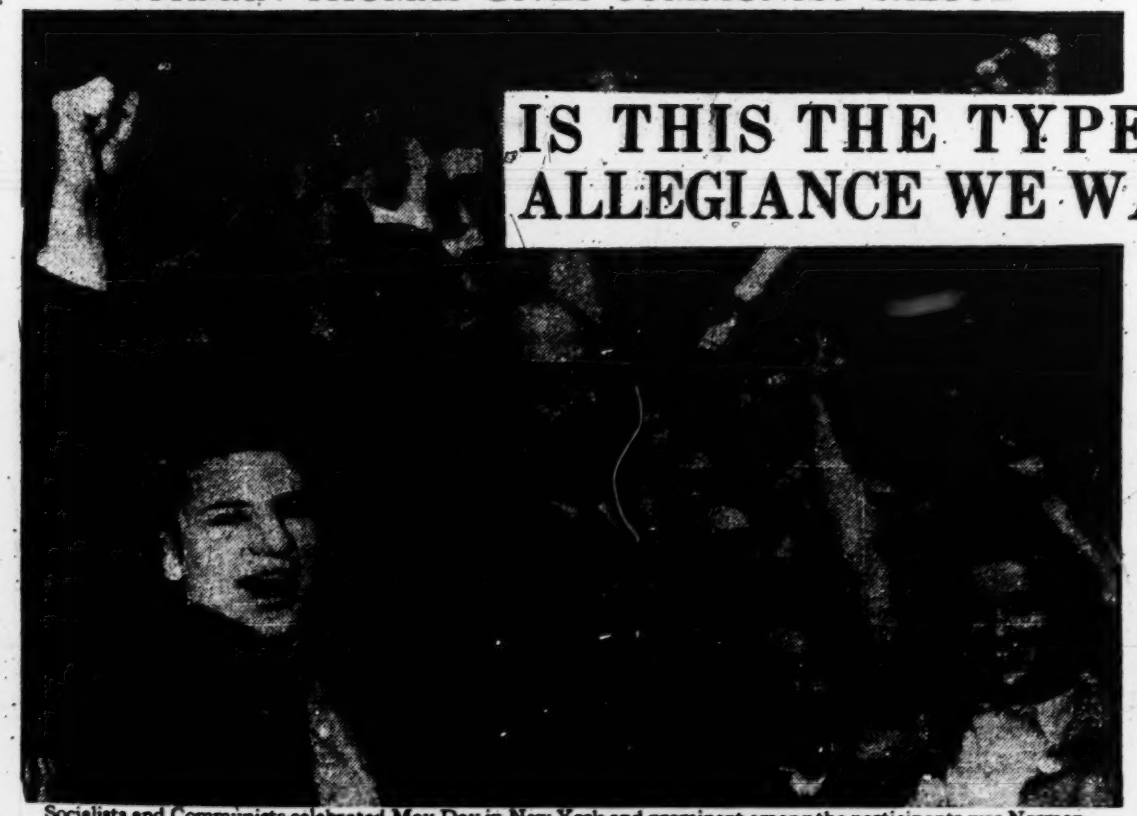
For identification.

[Letter from the Hudson County Building and Construction Trade Council, dated May 4, 1938, enclosing resolution approving the action of the Mayor and City Commissioners in "refusing a permit for and preventing the meetings of any of these Radical and Communistic groups".]

VETERANS ATTEN

NORMAN THOMAS GIVES COMMUNIST SALUTE

IS THIS THE TYPE OF ALLEGIANCE WE WANT?

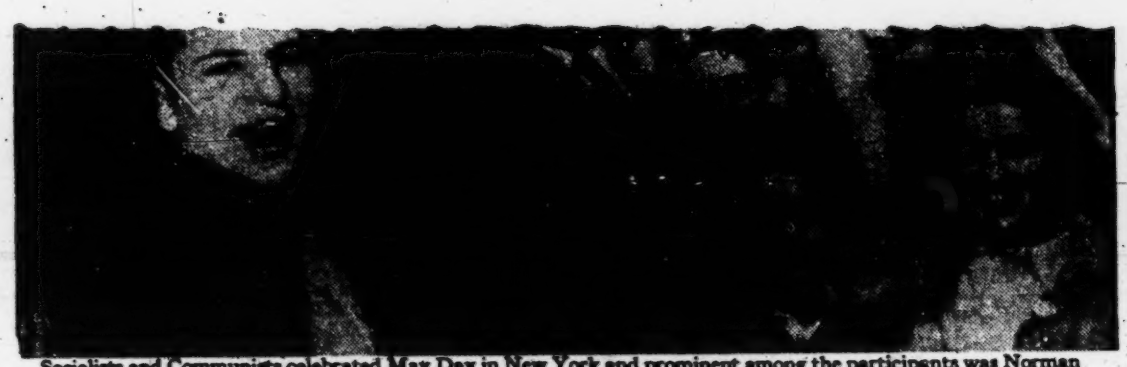


Socialists and Communists celebrated May Day in New York and prominent among the participants was Norman Thomas, a Socialist leader, who is shown (center) giving the Communist clenched fist salute and singing the "Internationale" along with the other Reds and Pinks surrounding him.

OR THIS?

AT OUR PROTEST MEETING HELD THURSDAY NIGHT AT IT WAS RESOLVED:--

That the veterans of this city call upon all of the citizens of Jersey City to prese on Saturday night in an orderly manner, carrying an American Flag, to show ence their support of the Mayor and officials of Jersey City, the Gold Star Mo War Mothers and Veterans of their efforts to keep the Reds who have destroyed s



Socialists and Communists celebrated May Day in New York and prominent among the participants was Norman Thomas, a Socialist leader, who is shown (center) giving the Communist clenched fist salute and singing the "Internationale" along with the other Reds and Pinks surrounding him.

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IT WAS RESOLVED:--

That the veterans of this city call upon all of the citizens of Jersey City to present the on Saturday night in an orderly manner, carrying an American Flag, to show by the ence their support of the Mayor and officials of Jersey City, the Gold Star Mothers a War Mothers and Veterans of their efforts to keep the Reds who have destroyed so man cities in this country from invading Jersey City. We will thus show to the world our tion that in Jersey City there is room for only one flag, the American Flag, and for o doctrine, the American Doctrine. We will further show to the imported gathering c haired Reds from New York and elsewhere out of this State that their presence is not and will not be tolerated in Jersey City.

Show your Americanism onight and be present . . . . American Flags will be distributed at Journal Square

A MESSAGE TO ALL WORKI

At a Protest Meeting held last night at Odd Fellows Hall (Lawyers The American Federation of Labor, Condemned the tactics of Comm

¶ At a Protest Meeting held last night at Odd Fellows Hall (Lafayette) The American Federation of Labor, Condemned the tactics of Comm attempting to invade Jersey City. You are urged to read the followi

WHEREAS, The working people of Jersey City are very deeply concerned with the efforts of Mayor Frank Hague to protect our city against the persistent attempts at invasion that have been made by Roger Baldwin, Norman Thomas and other leaders of the Red elements in the C.I.O. and other anti-American Communist groups, and

WHEREAS, The working people in this city wish to continue to lead peaceful and contented lives and to pursue their various occupations without molestation or interference from anyone, and

WHEREAS, By our action in calling this joint protest meeting, we are endeavoring to demonstrate our loyalty, to the principles of Americanism and our interest in the preservation of the rights of the working people of our city, which Mayor Hague so ably defends, and

WHEREAS, The Workers Defense League and other radical groups have publicly expressed their determination to hold a mass meeting at Journal Square, in Jersey City, on next Saturday evening, May 7th, in deliberate and forceful violation of existing law, and

WHEREAS, It is announced that one Jerry O'Connell, a Congressman and a leader of the C.I.O. and other radical and Communist elements, will speak at the aforesaid illegally scheduled meeting, and

WHEREAS, It is the unanimous opinion of the members of the Central Labor Union of Hudson County and the Hudson County Building Construction Trades, and their various affiliated unions of the American Federation of Labor, that it is injurious to the cause of organized labor and to the principle[s] permit Red meetings of this characte[r] Communists and other Reds from ot[her] public streets of this city; therefore,

RESOLVED, That the Director of Publi[c] mediately notified that the member[s] assembled and represented do strenu[ously] proposed meeting on May 7th, and character, upon the public streets o[f] it further,

RESOLVED, That all the members of t[he] or represented will present themsel[ves] May 7th, at Journal Square, at 7.[30] personal and public protest agains[t] meeting and that each person so p[re]sent as a symbol to the country and in p[ro]test of Reds, Communists and radicals, [to] of the American system of governm[ent] tactics will not be tolerated and w[ill] be it further

RESOLVED, That the members of th[e] sembled or represented call upon al[l] abiding peop[le] of Jersey City to [a]ssemble Square next Saturday evening, to [e]xpress ized labor and of the efforts of Ma[yor] and Communist elements out of th[e] the American standards of law and [or]der

Paid for by:

CEN[TRAL]
CON[STRUCTION]
LOC[AL]

Friends of Organized Labor assemble with us tonight at Journal Square at 7.30 P. M.

NS ATTENTION!!

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OR THIS?

G HELD THURSDAY NIGHT AT THE ARMORY

is city call upon all of the citizens of Jersey City to present themselves
n orderly manner, carrying an American Flag, to show by their pres-
ie Mayor and officials of Jersey City, the Gold Star Mothers and the
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octrine. We will further show to the imported gathering of long-
k and elsewhere out of this State that their presence is not wanted
n Jersey City.

Paid for by:
VETERANS COMMITTEE FOR LAW AND ORDER.

TO ALL WORKING MEN and WOMEN

t night at Odd Fellows Hall (Lawyers Building, Jersey City)
abor, Condemned the tactics of Communists and other Reds
ity. You are urged to read the following adopted resolution:

very deeply con-
protect our city
have been made
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organized labor and to the principles of American Government to permit Red meetings of this character, sponsored and addressed by Communists and other Reds from other states, to be held upon the public streets of this city: therefore, be it

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organized labor and to the principles of American Government to permit Red meetings of this character, sponsored and addressed by Communists and other Reds from other states, to be held upon the public s' eets of this city; therefore, be it

RESOLVED, That the Director of Public Safety of Jersey City be immediately notified that the membership of the organizations here assembled and represented do strenuously oppose the holding of the proposed meeting on May 7th, and any future meetings of a like character, upon the public streets or places of Jersey City and, be it further,

RESOLVED, That all the members of the organizations here assembled or represented will present themselves on next Saturday evening, May 7th, at Journal Square, at 7.30 P.M., to register a vigorous personal and public protest against the holding of this proposed meeting and that each person so present carry an American Flag as a symbol to the country and in particular, to the fanatical groups of Reds, Communists and radicals, whose purpose is the destruction of the American system of government, that in Jersey City such tactics will not be tolerated and will be resisted to the end; and, be it further

RESOLVED, That the members of the various organizations here assembled or represented call upon all of their friends and all the law-abiding people of Jersey City to present themselves at Journal Square next Saturday evening, to evidence their support of organized labor and of the efforts of Mayor Hague to keep these radical and Communist elements out of the city and to preserve in our city the American standards of law and order.

Paid for by:

CENTRAL LABOR UNION, BUILDING AND CONSTRUCTION TRADES, AND AFFILIATED LOCALS OF AMERICAN FEDERATION OF LABOR.

This is the month of Patrick, saint,
Who legend says, did leave no taint
Of snakes or other things that crawl
In that green land of Tara's Hall.
Behind the wheels of many cars
Are humans, who outstrip by far
The menace of the earthbound snake,
Who street and highway dangerous make.
To curb this maniac of the road
To lighten Death's so heavy load
The Safety League does, and will,
Teach a man to drive—not kill!

JERSEY CITY POLICE DEPARTMENT SAFETY LEAGUE

UNIT NO. 4

LINCOLN HIGH SCHOOL
Crescent and Harrison Avenues

FRIDAY, MARCH 4th, AT 8 P. M.

New Motion Pictures Songs Music

DEPARTMENT OF PUBLIC SAFETY GLEE CLUB AND ORCHESTRA

FRANK HAGUE
Mayor

4

DANIEL CASEY
Director of Public Safety

PLAINTIFFS' EXHIBIT "P-31."

[Folder containing the following 1938 applications for open air meeting permits and the Casey denials:

James Burkitt and Vincent Feno of the Longo Defense Committee submitted an application for a meeting at Journal Square, April 16, 1938, at 8:30 P. M.; denied April 14, 1938, "for the reason that investigation discloses such meeting would tend to result in disorder".

Two applications by Burkitt dated April 19, 1938, for meetings at Journal Square and at Bergen Square on April 23, 1938; denied on April 22nd for the same reason.

April 22, 1938, William Tallman, on behalf of Socialist Party and Norman Thomas, requested permit for Journal Square for the evening of April 30, 1938; denied April 27th, "on the ground that said meeting might tend to result in disorder and disturbance".

May 3, 1938, application by Hudson County Committee for Labor Defense and Civil Rights for evening of May 7, 1938. By letter dated May 4th, Casey requested a list of the speakers and the names and addresses of the officers of the association. On May 6th, Casey in denying the permit wrote "The speakers whom you list, namely, Congressman Jerry J. O'Connell and John T. Bernard, are personally obnoxious to the great majority of our citizens because of their Communistic endeavors. There has been considerable agitation by veterans and labor organizations, War Mothers and Gold Star Mothers and other civil groups in our city as the result of the announcement in the press that they were to appear here to speak".

On May 3, 1938, the Socialist Labor Party applied for a permit on May 14th at Lincoln and Central Avenues, and for May 21st at Orient and Jackson Avenues. On May 4, 1938, Casey wrote asking that Mr. Nicol Herold present the application personally and list the speakers who were to address the meeting and also furnish a list of the officers of

the Socialist Labor Party. After this information was furnished, the application was denied.

May 9, 1938, application by Independent Speakers Association for either May 19th or May 20th at Journal Square; denied by Casey on May 10, 1938.

Norman Thomas applications: dated April 27, 1938, for April 30, 1938; denied April 28th.

May 9th for May 17th or May 24th; denied May 10th.

May 17th, in which Thomas applied for a place other than Journal Square; denied by letter of May 20th, 1938.

Application by Hudson County Committee for Labor Defense and Civil Rights for meeting in Pershing Field, May 27th, to be addressed by Representative O'Connell, and Containing this statement: "We are especially asking for Pershing Field as a place which will not interfere with the trade of our townspeople. As an organization composed of Hudson County groups, we are solicitous of the business and welfare of Jersey City". Denied by letter May 25th, which refers to Congressmen O'Connell and Bernard's tour of Spain as guests of the Communist Party. It stated "Knowing that the C. I. O. has been prevented from gaining a foothold in Jersey City, Mr. O'Connell comes to their aid by raising the claim of denial of free speech, and by his every act is seeking to pave the way for the C. I. O. and their destructive forces entering our city". Casey then denies the application referring to Marcantonio and the International Labor Defense which is "part and parcel of the Communist Society known as the 'Red Aid of Russia', which has established branches all over this country".]

This Exhibit also includes the following permits granted:—

[Permits granted Miss Ellen Tracy for a parade on March 5, 1938 by War Mothers carrying banners outside the Jersey City Armory.

May 6th, on application of Hugh A. Kelly, Chairman Jersey City Veterans' Law and Order Committee, permit for parade from Armory to Veterans' Square granted, to be held May 7, 1938.

June 3, 1938, on application of Hugh A. Kelly, Chairman as aforesaid, permit for parade on June 6, 1938—granted.]

THE PRESIDENT *Says:*

"...(We must) also raise the purchasing power of that third of the nation which receives its income from industrial employment.

Millions of industrial workers receive pay so low that they have little buying power.

Aside from the undoubted fact that they thereby suffer great human hardship, they are unable to buy adequate food and shelter, to maintain health, or to buy their share of manufactured goods.

* * *

"I have spoken of labor as another essential in the three great groups of the population in raising the nation's income. Definite strides have been made and the right of labor to organize has been nationally recognized."

* * *

"For economic and social reasons our principal interest for the near future lies along two lines: FIRST, THE IMMEDIATE DESIRABILITY OF INCREASING THE WAGES OF THE LOWEST PAID GROUPS IN ALL INDUSTRY..."

(From President Roosevelt's message to Congress)

THE C. I. O. *Says:*

"The only way to support the President's program is for workers to join trade union organizations of their own choosing."

JOIN THE C. I. O!

Be Wise! ***Organize!***

I am interested in the C. I. O. and would like to have you send me more information.

Name

Address City

Factory

(All names and information will be held strictly confidential)

Mail to: **Committee for Industrial Organization**
17 William Street, Room 201
Newark, New Jersey

PLAINTIFFS' EXHIBIT "P-33."

Mr. Ernst:

This was sent to all City and County Department Heads.

DECEMBER 28, 1937.

IMPORTANT NOTICE

ALL VETERANS REPORT AT ARMORY TONIGHT, TUESDAY, DECEMBER 28TH AT EIGHT O'CLOCK (8:00) SHARP. THIS IS IMPORTANT.

MESSAGE FROM MAYOR'S OFFICE.

PLAINTIFFS' EXHIBIT "P-34."

Printed postal card from the Leaders of the 4th, 7th, and 8th Wards Democratic Clubs, Dated January 3, 1938, a sample of which is as follows:

SEVENTH WARD DEMOCRATIC CLUB (NORTH END)

EUGENE ERTLE, Leader

January 3, 1938.

Representatives of the Communists and other Red, radical groups are attempting to invade Jersey City behind the mask of a labor organization, and obtain a foothold here. Mayor Frank Hague has taken a firm and courageous stand against these enemies of law and order and our American institutions. All the people of Jersey City have been invited to attend a monster demonstration of loyalty to the Mayor at the Jersey City Armory, next Thursday evening, January 6th, 1938, at 8:30 o'clock, as an endorsement of Mayor Hague's attitude, and to pledge him their wholehearted support against the invasion of these Reds.

Every citizen of Jersey City has a vital interest in this question and it is your duty to be present at this meeting and to remain until it is over, even if you do not obtain a

seat in the Armory, as your pledge of loyalty to your Mayor and the City government.

EUGENE ERTLE

Busses will be stationed at Ocean Ave & Wigman Pway at 7:45 to take you to the meeting, and will be ready at the Armory after the meeting to return you to your home.

SHOW THAT YOU ARE A TRUE AMERICAN—

DO NOT FAIL TO ATTEND THIS MEETING.

(Union Label)

PLAINTIFFS' EXHIBIT "P-35."

VETERANS LAW AND ORDER COMMITTEE
921 BERGEN AVENUE
JERSEY CITY,

May 28, 1938

All organizations have been invited to participate in Jersey City's ceremonies to pay honor and respect to the flag of our country.

A parade will be held on Monday evening the 6th of June 1938 from Harrison Avenue and Bergen Avenue along Bergen Avenue to Journal Square.

All organizations—military, civil and political are asked to participate in their uniforms with colors.

Details concerning the parade and ceremonies will be issued by General William Higgins, the Marshall of the parade.

Call Journal Square 2-2100, or write the Veterans Law and Order Committee, 921 Bergen Avenue, Jersey City, and report on number of men you will have in the parade.

Yours very truly,

HUGH A. KELLY,
Chairman.

PLAINTIFFS' EXHIBIT "P-36."

(Letterhead of)

CITY OF JERSEY CITY
LAW DEPARTMENT
Jersey City, N. J.

December 20, 1937.

Mr. William J. Carney,
17 William Street,
Newark, New Jersey.

Dear Sir:

The newspapers contain articles in which you are quoted as saying that you intend to distribute pamphlets and papers in Jersey City, with or without the consent of the municipal authorities. You are further quoted in the press as saying that you intend to organize and hold a public meeting or public meetings in Jersey City, with or without consent or permit from the City administration.

Assuming you have been correctly quoted and that your intention is such as stated, I deem it advisable to direct your attention to the law of the State and to certain ordinances of the City, relating to the actions and conduct you contemplate carrying out.

On January 22, 1924, The Board of Commissioners of the Mayor and Aldermen of Jersey City passed an ordinance, entitled:

> "An Ordinance to regulate the distribution of newspapers, papers, periodicals, books, magazines, circulars, cards and pamphlets."

Section 1 of that ordinance reads:

> "No person shall distribute or cause to be distributed or strewn about any street or public place any newspapers, papers, periodicals, books, magazines, circulars, cards or pamphlets."

This ordinance is still in force and any complaint regarding the violation of the provisions I have quoted or of

any other provision of the ordinance, is cognizable before the Police Courts of the City. The ordinance provides a penalty upon conviction, for any person violating the ordinance or causing it to be violated or consenting thereto, or permitting the violation of any of the provisions thereof. The penalty is a fine of not exceeding ten dollars or imprisonment for a period not exceeding ten days in the City Prison or in the County Jail, in accordance with the statutes in such cases made and provided, or both, for the first offense and a fine of twenty-five dollars or imprisonment not exceeding thirty days or both for each and every subsequent offense.

On the subject of public parades or public assembly, I call your attention to an ordinance adopted April 15, 1930, by the Board of Commissioners of Jersey City. It is entitled:

> "An ordinance to preserve public peace and good order, and to prevent riots, disturbances and disorderly assemblage."

It provides that no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City, shall take place or be conducted until a permit shall be obtained from the Director of Public Safety. It further provides, by way of penalty, that any person or persons violating the provisions thereof shall, upon conviction before a Police Magistrate of the City of Jersey City, be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County Jail, for a period not exceeding ninety days or both. This ordinance also is in force at the present time.

I further call your attention to the law regarding unlawful assembly. It has been held in this State that where it is the common intent of the persons assembled to attain a purpose whether lawful or unlawful by the commission of such acts of intimidation and disorder which are likely to produce danger to the tranquillity and peace of the

neighborhood, and have a natural tendency to inspire rational, firm and courageous persons in the neighborhood with well grounded fear of serious breaches of the public peace, the crime of unlawful assembly is committed. This law prevails in this State. It is declared to be a misdemeanor and is punishable as such by imprisonment not exceeding three years or a fine not exceeding one thousand dollars, or both.

As corporation counsel of Jersey City, I am writing you this letter so that you and your representatives may clearly and fully understand the character of the act or acts you will commit in case you decide to enter Jersey City in violation of the City ordinances or of the laws of the State. In a spirit of fair warning, I inform you that if the laws of this State or the ordinances above cited are violated, or if any other laws of the State or ordinances of the City are violated, the perpetrators of these violations will be dealt with and punished according to law. It is the duty of the authorities of Jersey City and of Hudson County to maintain public peace and order by every lawful means at their command in the interest of the people of Jersey City and of Hudson County. That duty will be discharged.

I am sending a copy of this letter to the Prosecutor of the Pleas of Hudson County.

I am

Very truly yours,

JAMES A. HAMILL,
Corporation Counsel of Jersey City.

December 23, 1937.

Honorable James A. Hamill,
Corporation Counsel,
Jersey City, New Jersey.

Dear Sir:

I have been consulted concerning the letter written by you to William J. Carney dated December 20, 1937, in which

you seek, in what you say is a spirit of fair warning, to enlighten him concerning the statutes of New Jersey and the ordinances of Jersey City on leaflet distribution and on public meetings in your city.

Your letter is couched in language calculated to inspire fear in one not versed in legal fundamentals. My reaction to it is rather that you, too, although theoretically the impartial law enforcement officer of Jersey City, are overwhelmed by the hysterical outbursts of your Mayor in recent weeks. I have studied carefully your brief in opposition to the applications of the seven men jailed by Judge Botti for distributing innocuous circulars, and it furnishes the key which explains the threats of prosecution contained in your letter to Mr. Carney in which you take meticulous care to point out the possible fines and terms of imprisonment. Among other things you stated in your brief: "This leaves the applicants in the position of asking the court to review the question of whether the ordinance (on leaflet distribution) is or is not constitutional and the courts of this county do not determine such questions merely for the purpose of debate". I do not understand the duty of the courts of Hudson County to differ in any respect from the duty of courts in all other counties of this State when a constitutional issue is involved. If it is your confidence that the courts of Hudson County will not decide questions of constitutional right which has prompted you to warn Mr. Carney that you will continue enforcing the ordinance irrespective of the nature of the literature and the circumstances of its distribution, then we are miles apart in our respective views of constitutional privileges and the duty of the courts to protect them. I have every desire, however, to avoid all conflict between my clients and the police authorities of Jersey City, and I am wondering whether there is not some common ground in this field of law upon which we may meet. I have advised the distribution of a pamphlet entitled "The Wagner Labor Relations Act and Its Interpretation By The United States Supreme Court",

which will merely set forth the principal provisions of the statute and excerpts from the United States Supreme Court's opinions. Should you, in your interpretation of the Jersey City ordinance deem it necessary, each distributor in Jersey City will be assigned two persons, or a larger number if you prefer, whose task will be to pick up any of these pamphlets which may be dropped by the recipients on the sidewalks or streets.

In this connection I find that you also stated in your brief in the cases previously mentioned: "The general situation in this particular case is due to conditions and circumstances well known by the people of the State, and is an attempt of the applicants here to have reviewed by certiorari a municipal action and to contest the validity of an ordinance by the use of sharp practice and grounds and by their insistence upon personal rights". Exactly what this means I do not know, but I gather that insistence upon constitutional rights is regarded by you as sharp practice. This is so shocking a concept that I am glad, personally, to run the risk of the same stigma by advising my clients to continue to insist upon their constitutional privileges and personal rights. Will you be good enough, therefore, to let me know whether the distribution of the pamphlet above mentioned will have your approval, and whether you will advise the Jersey City police to this effect.

Your letter to Mr. Carney also states that under the ordinance adopted April 15, 1930 by the Board of Commissioners of Jersey City, no public parades or public assembly in or upon the public streets, highways, public parks, or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety, and that the penalty for violation is a fine not exceeding $200 or ninety days in jail or both. The reason an open air meeting is contemplated is that, as you well know, the owners of meeting halls in Jersey City have been so intimidated that they fear going against Mayor Hague's wishes will mean they will have to leave Jersey

City. All I ask is that you face these facts realistically. If you, as his legal advisor in municipal affairs, will inform the Mayor that it is unlawful for him to intimidate owners of halls in Jersey City, so that they will not hereafter refuse offers to pay for the use of their premises good currency which, but for the Mayor, they would be glad to earn, my clients will be happy to abandon their plan for an open air meeting and will hold all of their meetings indoors. However, unless you can prevail on the Mayor to make indoor meetings possible for them, they will have no alternative, as I see it, except to hold an open air meeting. Will you please let me know whether an open air meeting for the purpose of petitioning the Board of Commissioners of Jersey City to modify the leaflet distribution ordinance, and the ordinance on public meetings, and to take appropriate action against intimidation of owners of halls will be treated by you as a violation of the ordinance referred to in your letter.

Mr. Carney is appreciative of your high sense of fair play in warning him concerning the New Jersey law regarding unlawful assembly where acts of intimidation and disorder are intended, but he does not quite understand why you have volunteered advice on this subject. Mr. Carney informs me that at no time have he and his associates contemplated intimidation of any persons or the use of any methods which might lead to disorder at any meetings which they desire to hold in Jersey City, but which the authorities have thus far successfully prevented by methods quite generally understood. From the data submitted to me, it appears that all Mr. Carney and his associates have ever asked of the Jersey City official family is that owners of halls be not subjected to duress preventing the renting of their premises, that those interested in the C. I. O. have the right enjoyed by other groups to meet peaceably to discuss problems of common interest and that the police refrain from interfering by arrests and detention without cause with the constitutional rights of citizens of the United States and of

the State of New Jersey. Your warning on this subject is, I assume, also issued in good faith, and therefore I shall make a suggestion in the same vein. I am today writing Honorable Daniel J. Casey, Director of Public Safety, for permission to hold an open air meeting. He will undoubtedly seek your advice on this application. As I previously stated, if you can assure me the use of a hall in Jersey City for meetings, for which the owner will be compensated, there will be no necessity for holding one out of doors. If, however, you are unable to furnish this assurance then I must press the application for the open air meeting and I would suggest that you advise the Director of Public Safety that under the circumstances, the applicants have a lawful right to a permit and that he may assign as many police as he wishes to see that no intimidation, violence or other acts of disorder take place.

Since the matters discussed are of the utmost importance, I request a prompt reply to this letter.

Very truly yours,

Spaulding Frazer.

(Letterhead of)

CITY OF JERSEY CITY
LAW DEPARTMENT
Jersey City, N. J.

December 27, 1937.

Spaulding Frazer, Esq.,
744 Broad Street,
Newark, New Jersey.

Dear Sir:

I received in the afternoon of December 24th, your letter to me of December 23rd, in answer to a letter dated December 20th, written by me to your client, Mr. William J. Carney. My letter directed attention to the law respecting unlawful assembly and the two ordinances of Jersey City referred to herein.

The ordinance to preserve public peace and good order and to prevent riots and disorderly assemblage has been in force since the date of its adoption, April 21, 1930. The other ordinance regulating the distribution of newspapers, papers, periodicals, books, magazines, circulars, cards and pamphlets, has been in force since the date it was passed, January 22, 1924.

The law regarding unlawful assemblage has always prevailed in this State. Everyone has been compelled to comply with these ordinances and no exceptions should be made in the case of your clients. No one has ever been permitted to violate either of these ordinances. There is no reason why your clients should not do the same. I have so advised the Mayor and City Commissioners.

Your letter, which is lengthy and discursive, contains a number of comments, suggestions, complaints and criticisms. These I am not answering now for the reason that no practical result would follow and no practical advantage could be gained by either of us from discussing them at this time.

I am

Yours very truly,

JAMES A. HAMILL
Corporation Counsel.

JAH.h

PLAINTIFFS' EXHIBIT "P-37."

[List of industrial plants located in Jersey City.]

PLAINTIFFS' EXHIBIT "P-38."

AN ORDINANCE to prohibit the placing, carrying or exhibiting on sidewalks or roadways of showboards, placards, banners or signs for the purpose of displaying them and prescribing the penalties for the violation thereof.

The Board of Commissioners of the City of Jersey City Do ORDAIN:

1. No person shall place, carry or exhibit or cause to be placed, carried or exhibited on any sidewalk, or on any roadway, any showboard, placard, banner or sign for the purpose of there displaying the same; provided, however, that nothing herein contained shall prevent the placing of business notices upon ordinary business vehicles so long as such vehicles are engaged in the usual business or regular work of the owner thereof.

2. Any person violating or causing to be violated, any of the provisions of this ordinance shall, upon conviction thereof, be liable or subject to a fine of not exceeding fifty dollars ($50.00), or imprisonment for a period of not exceeding thirty (30) days in the City Prison or the County Jail or both, for each and every violation hereof.

3. Any complaint regarding the violation of any of the provisions of this ordinance shall be cognizable before the City Criminal Courts of this City.

4. This ordinance shall take effect immediately.

Introduced: February 19, 1935.
Adopted: May 18, 1937.

Daniel Casey
Michael I. Fagen
William J. McGovern
Arthur Potterton
Frank Hague,
Commissioners.

Dated: City Clerk's Office,
Jersey City, May 18, 1937.
Eugene Ertle, City Clerk.

PLAINTIFFS' EXHIBIT "P-40."

Clipping From "Newark Sunday Call," November 21, 1937
(Late City Edition).

CIO Unit Here Plans Invasion Of Jersey City

Will Defy Hague by Mass Organization for Workers.

Rally Date Picked

Headquarters Set Up, With Drive On to Enroll Members.

Leaders of the Greater Newark Industrial Council, CIO, will launch a mass organization drive in Jersey City, whose Mayor, Frank Hague, is the labor faction's declared foe.

The drive will include a Jersey City meeting December 3 at a place to be decided. Organized and unorganized employees of Jersey City plants will be invited, as well as labor sympathizers.

Speakers at the meeting will include Allan Haywood, New York CIO regional director; Michael J. Quill, president of the Transport Workers' Union, a leading CIO affiliate in Manhattan, and Harry T. Wendrich, official of the Pressmen and Assistants' Union, Local 31, and president of Labor's Anti-Injunction League of New Jersey. William J. Carney, regional CIO director, will probably be chairman of the meeting. Whether John L. Lewis, national CIO head, will appear was not announced.

Headquarters Set Up.

Headquarters for the organization drive has been set up in the heart of the industrial area, and CIO leaders say that a membership groundwork has been laid in various

Newark CIO Body Enters Jersey City

Continued From First Page.

ers in New Jersey to meet with them in Newark.

Another angle to the Jersey City labor situation developed last night when George S. Pfaus, North Jersey editor of People's Press, a labor newspaper, said injunction proceedings would be sought against police in that city. The police, he said, confiscated copies of the paper when four of its representatives refused to discontinue distribution of it in Journal Square.

Injunction Vacated.

By vacating an injunction, Federal Judge Forman in Trenton yesterday ended a labor union jurisdictional dispute involving 500 employees of the New York Trap Rock Corporation. The writ, against Edward Shinn, president of Local 825, International Union of Operating Engineers, was vacated when Michael Breitkopf, counsel for Mr. Shinn, told Judge Forman that AFL leaders had given his client the right to organize the trap rock workers. The right had been contested by officials of a quarry workers' international union, who obtained the injunction.

In a decision yesterday the Newark Labor Relations Board recommended that Beth Israel Hospital reconsider the dismissal of Miss Gusta Thaun, discharged from the hospital September 30. Officials of the Associated Hospital and Medical Professional Workers, a CIO affiliate, had charged that Miss Thaun had been discharged for union activity. Hospital authorities could not be reached for comment on the board's recommendation.

PLAINTIFFS' EXHIBIT "P-42."

Clipping From "New York Times," December 27, 1937
(Hague Statement)

"In order that the people of Jersey City, particularly the heads of our industries, the business men, the members of our labor unions and the many thousands of other men and women who earn their livelihood here, may know the reasons for the controversy between the CIO and the Mayor and City Commissioners, I want to state the facts clearly, so that everyone will realize the importance of the problem confronting us.

"While uprisings and unrest were prevalent thorughout the country, Jersey City was free of any disorder or labor trouble. Peaceful conditions existed in our city. Contributing to this result was the fact that we have always required that industry not only maintain proper working conditions for its employes, but that the highest prevailing scale of wages should be paid to them, and the employers have willingly accepted these requirements, and what is of especial importance, is the fact that whenever a labor dispute arose the city officials gave freely of their time and energies to fairly adjust the dispute. In every instance the officials were successfuul in satisfying both the employes and their employers. Naturally, this became known throughout the country. It was a notable record, given wide publicity, and because of it Jersey City has become recognized as a most desirable city in which industries should locate. Hundreds of industries came here and this has so encouraged the City Commissioners that they have entered into an extensive publicity campaign throughout the country, under the direction of Mr. Raymond Greer, the city comptroller, inviting industries to locate here. Our advertisements detail to the nation the splendid position of Jersey City, and read as follows:

" 'Both business and labor are content in Jersey City. Here there is no discrimination against either capital or the working man. For 21 years a stable and continuous city administration has worked

"The CIO plan of campaign was first to enter Jersey City for the purpose of distributing literature in all the industries here and in the business houses; and if they succeeded their next move was to throw hundreds of pickets around various industries in order to proceed to drive the employes into their labor movement. How was this to be accomplished? The very best proof as to how these men act may be found in the thousands of instances in other cities where working people who refused to be so driven were followed to their homes and assaulted; their very lives and those of their families were endangered, as well as the lives of peaceful citizens who have no desire for violence.

Visions Threats

"It was also their plan to select in our business section retail stores, throw a group of pickets in front of the establishments and then proceed to destroy the business which represents perhaps hundreds of thousands of dollars, by adopting illegal tactics, threatening customers and preventing purchasers from entering. It is a matter of common knowledge that these illegal tactics have cost industries and business people millions of dollars, and in a great many instances the entire business was destroyed. And of equal importance is the tremendous loss which labor has suffered in wages during these long drawn out disputes with the attendant distress to the families of the employes. These are the methods which these men have applied in other cities in which they have directed their attacks, and Jersey City would be no exception if they were permitted to follow out their program here

"I am endeavoring to do my duty as mayor of the City of Jersey City, pledged to protect the interest of the people and their property, and to see to it that our industries which daily employ thousands of our citizens, are not destroyed and thousands of unemployed forced upon the streets. I know that every new industry which locates here means employment for the unemployed, and it is only natural that, as the head of the city, it should be my desire to endeavor, to the best of my humble ability, to bring back to work as many of the thousands of unemployed as possi-

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a labor dispute arose the city
tion of
follows:

"'Both business and labor are content in Jersey City. Here there is no discrimination against either capital or the working man. For 24 years a stable and continuous city administration has worked for the good of both—insisting on satisfactory working conditions and fair compensation for labor, and at the same time safeguarding business against the violence of irresponsible elements. The result is an attitude of mutual respect and understanding.'

Sees Industries Interested

"These advertisements have interested many of the largest industries in America; so much so that they are in communication with the comptroller and surveys are actually being made by large concerns who are contemplating locating in our boundaries.

"These advertisements and the enviable record which we have established are the direct cause for the open attack of the CIO leaders upon Jersey City. They are opposed to any city which can boast about the absence of unrest and the freedom from labor disorder. Their principal method of operation is to create dsorder; to bring about labor disputes and to drive industries out of the city where they cannot gain control. Having by their methods driven industries out of other cities and realizing that these industries are coming to Jersey City they, in desperation, are determined to resort to every means of preventing industry from coming here. Their battle cry is to crush Hague because he has the courage to prevent them from gaining a foothold in Jersey City. That is the real purpose behind the CIO movement in Jersey City. Their campaign is headed by William Carney, who is the regional director for the CIO in this state, a man who comes from Ohio and has lived here only a short time.

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the unemployed, and it is only natural that, as the head of the city, it should be my desire to endeavor, to the best of my humble ability, to bring back to work as many of the thousands of unemployed as possible. In my efforts so to do I am striving to preserve to every citizen the right to peacefully earn a livelihood here.

"My whole life has been spent in the midst of the working people of our city. I have always respected them and they have always respected me, because I understand their problems. I believe, and have always believed, in the organization of labor; but organization along peaceful lines, which insure to the working man a peaceful and tranquil existence. I have always realized that the honest working man recognizes the relationship of labor and industry and that the seuccessful adjustment of difference is the underlying basis of contentment between employer and employe. I have realized that to make room for labor there must be provided the industry, and so my every act has always been to deal fairly both with industry and labor.

"If the people of my city believe in me, as I know they do, all I ask is that the people of Jersey City aid me in my efforts to obstruct this lawless element, whose only objective is to crush by terrorism; whose motive is to force itself upon our city for the purpose of destroying life and property by violence. If the people of Jersey City stand behind me as they have in the past, I can assure them that before this campaign of violence and terrorism is ended I will bring to justice all those who may be responsible for any unlawful attacks and violence in this city."

PLAINTIFFS' EXHIBIT "P-43."

Clipping From "Jersey Journal," January 13, 1938 (Chamber of Commerce Fiftieth Annual Dinner, Hotel Plaza, January 12, 1938).

About 500 men, representing every commercial and industrial organization in Jersey City, last night heard Mayor Frank Hague reaffirm his determination to "protect the great industries which provide a livelihood for our citizens."

"As long as I am mayor of this city, the great industries which provide a livelihood for our citizens will not be 'invaded,'" Hague declared, amid cheers and applause.

The annual dinner of the Chamber of Commerce, held last evening at the Hotel Plaza, Journal Square, attracted a greater number of business men than had attended any of the annual banquets of the chamber in the 50 years since it was organized. Hague and Congressman Hamilton Fish of New York, a Republican, were the principal speakers.

Congressman Fish refused to take any stand in Mayor Hague's "particular fight," but he did deliver a stinging attack upon the forces against which Hague is combating. He said:

"I do not propose to attempt to advise the people of Jersey City as to what their attitude should be toward the CIO. That is a matter that rests entirely with them, and their constituted authorities.

"There is no doubt but that the Communist party in this country is using the CIO for its own purposes of spreading Communism and revolutionary spirit among our wage earners. I believe that the rank and file of the CIO are loyal citizens, but that many of the organizers are avowed Communists who seek to spread industrial unrest.

"I agree with Mr. David Dubinsky, president of the International Ladies' Garment Workers' Union, affiliated with the CIO, when he infers that the Communist elements in the CIO have caused the failure of the peace negotiations with the American Federation of Labor, and rejoice at it.

"Every American interested in organized labor wants to see labor united in a law-abiding American way, and there should be no real difficulty in bringing this about, if the Communist element in the CIO is eliminated. I know Mr. William Green, president of the American Federation of Labor, and am confident that he will never compromise with Communism in any shape or manner. He is willing to accept industrial unionism on its own merits,

Abhors Communism

"I loathe and abhor Communism and all other forms of foreign dictatorships that seek to undermine and destroy our free institutions both from within and from without. The aims and purposes of the Communists are so utterly destructive of our free institutions and our liberties that there is no room whatever for Communism in the United States when the facts are known. We are still a free country, and we propose to keep it free from all forms of alien dictatorships of the left or of the right.

"What is it that the Communists seek to impose upon the American people? (1) Destruction of all forms of religion and teaching hatred of God; (2) destruction of private property and inheritance; (3) using the Communist International, with headquarters at Moscow, to spread revolutionary propaganda and to incite strikes, riots, sabotage, and industrial unrest in all non-Communist nations; (4) to promote the bitterest kind of class hatred; (5) to develop a class or civil war in order to obtain the ultimate objective; (6) a Soviet dictatorship under the red flag with a world capital at Moscow.

"The best method of fighting these principles and objectives of Communism is not through force but rather by education and pointing out the tragic failure of Communism in Soviet Russia.

"The Communist government of Russia is an absolute despotism, based upon fear, a huge and bloodthirsty spy system backed by armed force and violence. There is no liberty of speech, or the press, or of assembly. There is nothing but suppression of the rights and liberties of the individual, the control of the people through fear, regimentation, and the bread ticket. The impoverishment, undernourishment and

"The larger strikes, violent though they have been, are merely forerunners of what to expect in the near future, with a huge loss in the pay roll, in economic stability, and an increase in class hatred and Communism. That Communism feeds on depression and unemployment is self-evident, as well as on any form of discontent, such as strikes, riots, or industrial unrest.

Hague Fiery

Mayor Hague put into his speech a zest and fiery forcefulness characteristic of his old time political orations. He explained his attitude in the present conflict with radical elements in the American Civil Liberties Union, which organization he charged is "the Communist party under another name" and his attitude toward the CIO to the membership of which he paid tribute but the leadership of which he branded as "Communistic."

In his opening remarks, the mayor praised the Chamber of Commerce for its patriotism in arranging the public demonstration of loyalty to the civil officials in their campaign against the so-called "invasion" of Jersey City by radical elements in the union organization. He made it clear that he is disposed to support the labor organizations and the workers who are members of the CIO, but is unalterably opposed to the "racketeer" element among labor leaders.

"Jersey City is a moral, clean city," he said. "We have no racketeers here, no vice and no immorality."

Later the mayor said:

"I have been at the head of the government of Jersey City for more than 25 years. I've tried to cooperate with industry and with the workers. Jersey City is an industrial community. I certainly have no feeling against the honest working man who has been induced to join up with the CIO, but I have an unalterable contempt for certain elements among the leaders of the CIO.

Not a Czar

"I am not a tyrant or a czar. When they say that Mayor Hague is a tyrant who tries to deprive the working man of the right to organize when the say I attempt to op-

"There is no doubt but that the Communist party in this country is using the CIO for its own purposes of spreading Communism and revolutionary spirit among our wage earners. I believe that the rank and file of the CIO are loyal citizens, but that many of the organizers are avowed Communists who seek to spread industrial unrest.

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Sees Labor Alarmed

"The growing hostility between the CIO and the American Federation of Labor is harmful to the cause of labor. But any compromise that includes the revolutionary propaganda and destructive activities of the Communist organizers would be disastrous to American labor and to American industry. I predict that if the CIO continues on its separate way the next step will be a bitter knock-down and drag-out fight on the part of the Communist element to take over control of that organization, oust its present leaders or convert them to Communism.

"I want to make it clear that I am not a Fascist, ultra conservative, reactionary, or Bourbon who is opposed to progress or meeting changing economic conditions with new ideas. I am a Lincoln Republican, who believes in popular government and has faith in our free institutions and in the American people. I was an arden follower of Theodore Roosevelt, and stood for social and industrial justice back in 1912, just as I still advocate it today.

"I believe in liberalism, which is nothing more than the right of the people to govern themselves, and which was the fundemental political faith of Abraham Lincoln. I not only have faith in the people, but also in our representative and constitutional form of government, which is the fairest, wisest, most honorable and best form of government devised by the mind of man.

of religion and teaching hatred of God; (2) destruction of private property and inheritance; (3) using the Communist International, with headquarters at Moscow, to spread revolutionary propaganda and to incite strikes, riots, sabotage, and industrial unrest in all non-Communist nations; (4) to promote the bitterest kind of class hatred; (5) to develop a class or civil war in order to obtain the ultimate objective; (6) a Soviet dictatorship under the red flag with a world capital at Moscow.

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"We have nothing to do with the form of government in Soviet Russia, but in view of the fact that the Communist International at Moscow and the Communists in the United States, all of whom take their orders from the Moscow International, are spreading revolutionary propaganda here and seeking to impose Communism upon us, we have a right and a duty to find out the facts as to how it works in Russia and expose its tragic and horrible failure.

"Communists either led or fanned the flames in all of the following strikes, and in numerous instances blood was shed and people killed: The longshoremen's strike, which ended in a general strike in San Francisco; the Imperial Valley strike among the fruit-growing industries in California; the truck drivers' strike in St. Paul and Minneapolis, which ended in a general strike and resulted in martial law; the Toledo auto workers' strike; the packing industry strike in Chicago; the textile industry strikes in Rhode Island, Massachusetts, New Jersey and Connecticut; the milk, taxi and fur strikes in New York; the coal strikes in Kentucky, West Virginia and Pennsylvania; the relief workers' strikes in Arizona and Oklahoma; the agricultural workers' strike in New Jersey, and the share-croppers' strike in Tennessee, Arkansas and Alabama. In addition, the Communists are responsible for numerour other strikes and disorders throughout the country.

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Not a Czar

"I am not a tyrant or a czar. When they say that Mayor Hague is a tyrant who tries to deprive the working man of the right to organize, when the say I attempt to oppress the working man, I challenge that charge.

"I am not a ruler, I am not a tyrant, a czar or a dictator as has been charged. I have simply tried to live up to my duty and my obligations as mayor of this city. I've tried to protect both labor and industry in Jersey City. I have tried to encourage industry to locate in Jersey City because that means employment of labor and each time an industry is driven out of our city it means loss of employment to hundreds of our citizens.

"I have never tried to hamper the CIO from organizing in Jersey City in a peaceful, lawful, and orderly manner. There are many units of the CIO here and they have been permitted to organize, to strike and even to picket in this city. The CIO has organized here and has had public meetings here and they were not molested or disturbed. So long as they conduct their affairs in a peaceful and law-abiding manner they are welcome and will enjoy the same rights and privileges as are accorded the American Federation of Labor.

"These CIO Reds, however, Mayor Hague said, "are disturbed by our campaign of advertising in which we have called attention to the fact that Jersey City is a place in which peaceful relations exist between the employer and the employed. In our advertisements we have informed the world that we will protect industry as well as labor and will not permit racketeer labor leaders to interfere with and molest industry. We have said to them 'You shall conduct your own business without interference [illegible] labor racketeers.'"

Hague then went on to tell of having read in the newspapers of the threat made by officials of the American Civil Liberties Union to lead hundreds of members of a radical branch of the seamen's union into Jersey City at a time when there was no strike of seamen in Jersey City. The threat was made by Harry Bridges, radical leader of the seamen's union, he said.

"We were familiar with the record of bloodshed and violence and of the millions of dollars in property losses caused by this man Bridges and his followers on the West coast," Hague declared. "They had decided Jersey City was too peaceful and must be invaded and that the peace and quiet of our community must be disturbed. It was my duty, as I saw it, to notify the Commissioner of Public Safety that this invasion must not take place. We met them when they entered Jersey City and escorted them to the city lines. Then one of these radical leaders, one of these Reds, a Communist, came here leading a delegation. Mr. Garfield Hays led this delegation and when he realized the Jersey City Police were determined to do their duty he wrapped himself in an American flag and began to shout about his civil liberties and constitutional rights. What most people did not know is that while he was wrapped in the American flag there was inside, under his coat, the red flag of Red Russia

"I want to tell you that as long as I am mayor of this city, I will exert every ounce of law that is invested in me to drive this radical element out of our city."

The mayor declared that "The American Civil Liberties Union is the Communist party under another name," and told of the activities of that organization in suing out a writ of injunction in the Federal Court, which injunction was vacated on the following day by the Federal Court of Appeals. He also told of a suit by Arthur Garfield Hays against Hague and Director of Public Safety Daniel Casey for damages to the extent of $25,000, which suit is still pending.

Criticizes Carney

William Carney, CIO regional director, was subjected to severe criticism by the mayor, who charged Carney—"this

The mayor spoke feelingly of the "Red Communists" who hide behind "a smoke screen of protests in defense of their 'civil liberties and constitutional rights' to cover their anti-American activities. As soon as they begin to shout about 'free speech' and 'free press' and 'civil rights' and 'constitutional rights,' I know they are Communists," he said. "They are not really fighting for rights but using this cry as a subterfuge. Did the people of the city of Detroit receive constitutional protection from this element? Would it be 'constitutional' to permit the destruction of the rights of our workers and of industry here just for the sake of stopping this cry of the invaders who complain that their 'constitutional rights' were ignored? Must we sacrifice all civil rights and liberties of the citizens of Jersey City just to satisfy those who would destroy us in the name of their constitutional 'liberties'?"

Raising his hand and putting additional emphasis into his utterances, the mayor proclaimed:

"The sooner we teach these people what the Constitution really means, the better it will be for all concerned."

Fires on Baldwin

Hague then reviewed the record of Roger N. Baldwin, director of the American Civil Liberties Union, whom he characterized as "an out and out Communist," telling of the testimony before the Fish committee of Congress, when Baldwin declared he would uphold the right of any citizen or alien to advocate assassination and the forcible overthrow of government and of Baldwin's conviction and imprisonment as a draft dodger during the World War.

"This is the man," Hague said, "who says he is going to teach Mayor Hague Americanism."

Hague also attacked Morris L. Ernst, Baldwin's chief aide, declaring Ernst is treasurer of the Garland Fund, established for the spread of Communistic propaganda in this country. He charged Ernst in attempting to organize the Lawyers Guild and inducing the Newark Newspaper Guild to join the CIO, evidenced a determination to gain control of the courts and the press as part of the Red movement. He also attacked attempts to organize

Dr. Hugo Berman, chairman of the general committee, opened last night's forum at the conclusion of the dinner service and he introduced John H. Allen, president of the Chamber of Commerce, who served as toastmaster. Allen presented Congressman Fish and Mayor Hague. The mayor's speech was broadcast over a network of local radio stations and was heard throughout the metropolitan area.

Among those seated at the speakers' table were Counselor Louis Comen, president of the Hoboken Chamber of Commerce; A. Z. Benedict, oldest member of the board of directors of the Jersey City Chamber of Commerce; Robert Carmichael, vice-president of the Commercial Trust Co.; George J. Baumann, assistant counsel, Jersey City Chamber of Commerce; Commissioner Victor H. Berman, of the Interstate Park Commission; Kelley Graham, president of the First National Bank of Jersey City; Commissioner Arthur Potterton, director of Revenue and Finance of Jersey City; Joseph G. Parr, president of the Trust Company of New Jersey; Louis Sherwood, oldest past president of the Chamber of Commerce; Dr. Hugo V. Berman, chairman of the general committee; Mayor Hague, John H. Allen, president of the Chamber of Commerce and toastmaster of the evening; Congressman Hamilton Fish, of New York; former Judge Robert Carey, Rev. Canon Henry B. Bryan, Edwin B. Lord, executive secretary of the Chamber of Commerce; Jacob Binder, president of the New Jersey Association of Commercial Executives; William H. Hall, vice-president of the Chamber of Commerce, and Surrogate John H. Gavin.

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William Carney, CIO regional director, was subjected to severe criticism by the mayor, who charged Carney—"this great labor leader from the West, this great leader who brought about all the bloodshed and disorder in Ohio"—had made public declaration of his intention "to invade Jersey City whether Mayor Hague likes it or not." He quoted Carney as having threatened that, "law or no law, we'll demand our rights and let Hague dare to stop us."

"Gentlemen," said Hague, "we stopped them. Not only did we stop them but we locked them up. The deputy chief of police warned Mr. Carney's followers that they were about to violate the law; that they were committing illegal assemblage, and that if they persisted they would be subjected to arrest. These invaders answered, 'Well, we get our orders from Carney, you get yours from Hague—we are going to obey our orders and we don't care about Hague or his Jersey City laws.'

"Now," Hague asked, "if I had permitted these intruders to carry out their purpose, what would have happened to industry in this city and to the thousands of our workers who would have been destroyed?"

Hague then declared, "So long as I am mayor of Jersey City the great industries which provide livelihoods for our citizens will not be invaded and destroyed."

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"The sooner we teach these people what the Constitution really means, the better it will be for all concerned."

Fires on Baldwin

Hague then reviewed the record of Roger N. Baldwin, director of the American Civil Liberties Union, whom he characterized as "an out and out Communist," telling of the testimony before the Fish committee of Congress, when Baldwin declared he would uphold the right of any citizen or alien to advocate assassination and the forcible overthrow of government and of Baldwin's conviction and imprisonment as a draft dodger during the World War.

"This is the man," Hague said, "who says he is going to teach Mayor Hague Americanism."

Hague also attacked Morris L. Ernst, Baldwin's chief aide, declaring Ernst is treasurer of the Garland Fund, established for the spread of Communistic propaganda in this country. He charged Ernst in attempting to organize the Lawyers Guild and inducing the Newark Newspaper Guild to join the CIO, evidenced a determination to gain control of the courts and the press as part of the Red movement. He also attacked attempts to organize teachers in a CIO unit as part of a program to inculcate radical and Communistic teachings into the educational system of the United States.

Speaking of Ernst, Hague said: "He has Communism spread throughout the CIO and strives to control that organization. The purpose is to destroy life and property."

In conclusion Hague said:

"Better Wake Up"

"I say to the people of this country, 'You better wake up!' The time is not far off when you will find this country is in serious conflict. It is the duty, not only of the Mayor of Jersey City, but of every public official in America, to tell the people what is going on in this land and to protect the interests of his people, of his government and of his flag against this Red invasion."

The Mayor addressed an audience of business men representing practically every industry within the city. This audience offered a vivid contrast to that addressed by him last week when he spoke before an assemblage representing almost every labor organization, civic society, fraternal, veteran and social organization in Jersey City.

Commission; Kelley Graham, president of the First National Bank of Jersey City; Commissioner Arthur Potterton, director of Revenue and Finance of Jersey City; Joseph G. Parr, president of the Trust Company of New Jersey; Louis Sherwood, oldest past president of the Chamber of Commerce; Dr. Hugo V. Berman, chairman of the general committee; Mayor Hague, John H. Allen, president of the Chamber of Commerce and toastmaster of the evening; Congressman Hamilton Fish, of New York; former Judge Robert Carey, Rev. Canon Henry B. Bryan, Edwin B. Lord, executive secretary of the Chamber of Commerce; Jacob Binder, president of the New Jersey Association of Commercial Executives; William H. Hall, vice-president of the Chamber of Commerce, and Surrogate John H. Gavin.

[illegible] appeal was not announced.

Headquarters Set Up.

Headquarters for the organization drive has been set up in the heart of the industrial area, and CIO leaders say that a membership groundwork has been laid in various unions.

An inkling of the drive was given last week in a demand by Mr. Carney for an investigation of what he termed the "abrogation of civil rights" in Jersey City in connection with a strike in a steel flooring concern. He said police had ordered the strike called off "without the formality of an injunction."

Announcement of plans by labor for legislative action was made last night by Edward Selden, organizer in this area for the Federation of Architects, Engineers, Chemists and Technicians.

Mr. Selden said representatives of the three New Jersey CIO councils—Greater Newark, Trenton and South Jersey—would go to Washington this week with other CIO labor leaders to discuss with New Jersey Congressmen labor legislation, specifically the Wagner Labor Relations act and wages-and-hours bills.

The trip, he said, was at the suggestion of a group of Congressmen who had declared themselves unable to accept the invitation of CIO lead-

Continued on Page 2, Column 4.

[illegible] Discovers Blaze'

PLAINTIFFS' EXHIBIT "P-44."

[Full page advertisement in Jersey Journal, dated January 6, 1938 captioned "Proclamation". Sub-title, "Mayor Hague's appeal to the people". The body of the Proclamation reads, as follows:]

"This meeting called by the Jersey City Chamber of Commerce and allied civic organizations will show to the nation that the people of the city are behind me solidly in my efforts to keep the red army of the invaders, hiding behind the mask of the C. I. O., out of Jersey City. Your continued presence until the conclusion of this rally is necessary to serve notice upon the whole country that I have the support of all of the people of Jersey City in my efforts to keep our city free from this menace.

"Be present and please do not leave until the end of the meeting at ten-thirty o'clock.

FRANK HAGUE, Mayor.

EUGENE ERTLE,
City Clerk."

PLAINTIFFS' EXHIBIT "P-45."
Clipping From "Jersey Journal," January 7, 1938.

THE JERSEY JOUR

FRIDAY, JANUARY 7, 1938

...ated American Nig...

Text of Hague Speech At Vast Anti-Red Rally

The text of Mayor Frank Hague's address at the anti-Communism meeting at the armory last night:

Let me take this opportunity of thanking the Chamber of Commerce for their splendid, patriotic efforts in sponsoring this meeting; I want also to thank the veterans, the labor organizations and all the other civic groups for their fine co-operation. And let me thank the people who have assembled here and filled this great building to capacity and friends who are standing by thousands in the streets outside, for this expression of their loyalty and support in my efforts to protect our city from invasion by the Communists and other Red groups behind the mask of a labor organization.

You often wonder what this is all about—whether Mayor Hague is an enemy of labor. Let me say I have been a friend of labor for over 25 years. Our city is an industrial city. We have nine large trunk terminals here. We have thousands and thousands of working people employed in industry and I have never yet had any difficulty with the people in those industries.

For Working People

I come from working people! My father before me toiled for his living in this city. All my associates have been working people. I believe absolutely in the right of working men to organize, bargain collectively and to strike for improved working conditions and higher wages. I have no quarrel with the hundreds of thousands of honest working people who have been induced to joint the CIO in the belief that it is an American labor organization, but I am absolutely against any union whose leaders are enemies of our government, and for the

Federation of Labor. They obtained charters throughout the country for new trades and crafts under the federation and when they felt strong enough they selected John L. Lewis as a "window dresser" to lead the movement which they thought would succeed in taking over the entire labor group in this country. President William Green was suspicious of these new elements. He publicly denounced them and was able to defeat the purpose of John L. Lewis and his followers. Failing in this effort, they thought themselves strong enough, because of the large number of Communist unions they had organized under the American Federation of Labor to declare open warfare, and John L. Lewis served notice on President Green that his terms must be accepted or they would break away.

Red Army-CIO

The division took place, with the Red army, known as the CIO, under the leadership of Lewis, Brophy and hundreds of Communist associates, on one side, and William Green of the conservative labor group on the other side. Immediately war was declared by this Red army on several of the greatest industries in this country. Riot, disorder, bloodshed, sit-down strikes and property destruction began, defiance of law and order was boldly declared and attacks made on government in many cities. They had to move fast, they had to strike and make progress immediately. Lines were drawn, with the American Federation of Labor on one side and the CIO on the other.

I believe it my duty on this occasion to lay all my cards on the table. I want to make plain

cause the collapse of our government.

These are the forces that have selected me for destruction. That this has been a city of law and order means nothing to these Red invaders. They have decided that the industries of this city must fall and they must be given the right to intimidate and browbeat the working people of this city. Jersey City is marked for destruction. They are broadcasting all over the country that Mayor Hague has defied the CIO, he is an enemy of the Reds and he must be punished.

As long as I am mayor and as long as I have power, I shall stand and oppose this Red group —they who enter and destroy industry.

otic efforts in sponsoring this meeting; I want also to thank the veterans, the labor organizations and all the other civic groups for their fine co-operation. And let me thank the people who have assembled here and filled this great building to capacity and friends who are standing by thousands in the streets outside, for this expression of their loyalty and support in my efforts to protect our city from invasion by the Communists and other Red groups behind the mask of a labor organization.

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For years we have never understood these practices that have been introduced—mass picketing introduces violence, threats,

a "window dressing" movement which they thought would succeed in taking over the entire labor group in this country. President William Green was suspicious of these new elements. He publicly denounced them and was able to defeat the purpose of John L. Lewis and his followers. Failing in this effort, they thought themselves strong enough, because of the large number of Communist unions they had organized under the American Federation of Labor to declare open warfare, and John L. Lewis served notice on President Green that his terms must be accepted or they would break away.

Red Army-CIO

The division took place, with the Red army, known as the CIO, under the leadership of Lewis, Brophy and hundreds of Communist associates, on one side, and William Green of the conservative labor group on the other side. Immediately war was declared by this Red army on several of the greatest industries in this country. Riot, disorder, bloodshed, sit-down strikes and property destruction began, defiance of law and order was boldly declared and attacks made on government in many cities. They had to move fast, they had to strike and make progress immediately. Lines were drawn, with the American Federation of Labor on one side and the CIO on the other.

I believe it my duty on this occasion to lay all my cards on the table. I want to make plain to the American people the motives behind this Communist movement and call them by their right names. Of course, the great mass of honest working people who have been induced to join the CIO do not know the facts. I believe them to be true Americans. I want them to know the records of the Red leaders who are in absolute control of that organization, every one of whom is an associate of Roger N. Baldwin and his partners in Communism. These Communists direct the Red army, plan the campaign against every city and every industry selected as a victim and assign the Communist lawyers for the battles in court. Roger N. Baldwin is a noted radical. He was arrested during the war as a slacker, pleaded guilty and was sentenced in the United States Court in the City of New York to one year in prison, which sentence he served. He is proud of that record. He was also convicted in Passaic Coupnty for inciting riot in a labor dispute, and sentenced to six months in the penitentiary by a county judge. He has testified before a United States Congressional committee that he believes in the right to advocate murder, assassination and the overthrow of the United States Government. Morris Ernst, general counsel for the CIO, is treasurer of the Garland Fund and connected with numer-

cause the collapse of our government.

These are the forces that have selected me for destruction. That this has been a city of law and order means nothing to these Red invaders. They have decided that the industries of this city must fall and they must be given the right to intimidate and browbeat the working people of this city. Jersey City is marked for destruction. They are broadcasting all over the country that Mayor Hague has defied the CIO, he is an enemy of the Reds and he must be punished.

As long as I am mayor and as long as I have power, I shall stand and oppose this Red group —they who enter and destroy industry.

I hope this is an inspiration for others in protest against this Red menace. Jersey City will stand firm against this Red menace.

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never permitted a strikebreaker to enter the boundaries of Jersey City. I have never permitted any business or industry which has been established after years of struggle and investment to be destroyed by an excited mob, even if they had real grievances.

For years we have never understood these practices that have been introduced—mass picketing introduces violence, threats, destruction of industry, driving thousands and thousands of people out of work.

"We are a law-abiding community. We haven't any disorder in Jersey City.

That is the reason we have been selected by the CIO leaders, under the Civil Liberty Union. The element which I have branded as Communists and enemies of law and order gained control of the Seamen's Union on the West Coast. Under the leadership of Harry Bridges, alien-born and never naturalized (he boasts he will never become an American citizen) they began an uprising in the largest city on the Coast, took complete control of the city, threw it into a condition of violence and chaos such as never before happened in this country. Then this man, Bridges, came East, intending to take over and organize the waterfronts of the Atlantic Coast cities under his Communist domination. Trouble started. Law enforcement agencies and conservative labor organizations opposed Bridges. Violence and disorder ensued.

Jersey City Attacked

An attack was opened on Jersey City. There was no strike here; our workers were satisfied. Hundreds of Communist organizers tried to invade Jersey City. They were turned back at the city line by an efficient police department under the authority of courageous officials. That upset them; an American city and American officials had dared to challenge them—it must not be on their record that they were not permitted to bring disorder and violence into Jersey City. The fake strike called, they gave it up as a bad job, although Arthur Garfield Hays wrapped himself in the American flag and paraded our streets. Lawsuits were begun, injunction proceedings started—no result. Jersey City was a marked city; it must be invaded and conquered. No public official must be permitted to set himself above the CIO. I am trying to show them they are no bigger than the law, the law that rules all of us. It rules me and it must rule them. I am strong in this fight, not because of any personal strength or influence, but when a man represents the strength of American patriotic public opinion against Communism, which would destroy America, he is bound to win. For years this Red group had been trying to penetrate the American

citing riot in a labor dispute, and sentenced to six months in the penitentiary by a county judge. He has testified before a United States Congressional committee that he believes in the right to advocate murder, assassination and the overthrow of the United States Government. Morris Ernst, general counsel for the CIO, is treasurer of the Garland Fund and connected with numerous organizations identified with Communism and Soviet Russia. Garland, who was a noted Red radical, was convicted in Massachusetts of running a free love farm and sent to the penitentiary. He left a fortune of millions to promote and continue the radical movement. Morris Ernst has faithfully followed his wishes and the record shows that enormous sums from this fund have been spent to promote un-American and Communistic propaganda. John Brophy, noted Communist, second in command to John L. Lewis, is an alien-born radical who has been mixed up with most of the violent labor disturbances in this country for the past 20 years. Some years ago he tried to wrest control of the miners' union from John L. Lewis and during the campaign for the presidency of the union Lewis denounced Brophy and his entire ticket as Communists. Brophy was defeated.

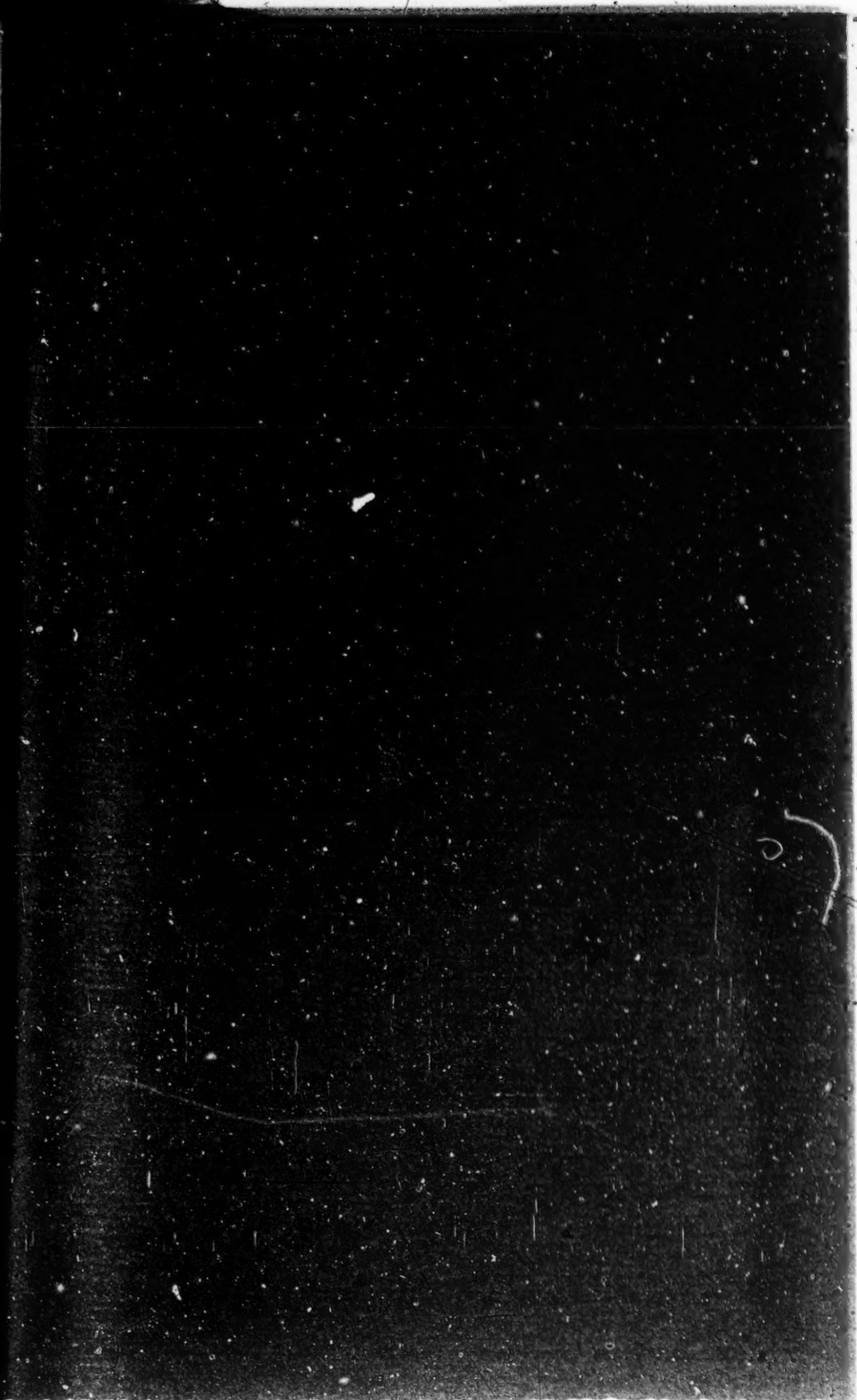
Records of Leaders

I have complete records of more than 200 of the leading executives, directors, organizers and field men of the CIO, which prove that they have been leaders of radical or Communist movements in this country, many of them for the past 10 and 15 years. They work under cover. They are working to gain control of every group which has power and influence. Writers on many newspapers joined the Newspaper Guild. This guild has now been dragged into the CIO by so-called "leaders." The great majority of our American newspaper men would have nothing to do with Communism, but you can see what the purpose is; they are trying to control the press. They organized the Lawyers' Guild in a drive for power in the legal profession, in their efforts to influence the courts. They are trying to organize the teachers in our school system; they have penetrated our colleges; they have recruits in every university in the country. They strike through the educational system to poison the innocent minds of our youth with their Red doctrines. They will stop at nothing. This is a real fight. Their plans have been laid for a long time, they have been building up for years and are well entrenched. They are not interested in the working man but through him they aim to destroy the business and industry of this country,

PLAINTIFFS' EXHIBIT "P-46."

[Advertisement in the Jersey Journal of June 3, 1938, signed "Frank Hague" and captioned "Mayor Hague's Appeal to the People." In the body appears the following:]

"Those of our people who cannot parade are invited to come and stand on the sidelines with an American Flag which will be supplied by the Committee of Veterans. This issue will determine whether Communism or Americanism will prevail in Jersey City. Your presence will be notice to the whole country that Jersey City is one of the greatest American cities in the Nation."



DEFENDANTS' EXHIBIT "D-1."

[Newspaper clipping from Jersey Journal—newspaper circulating in Jersey City, dated December 18, 1937, heading: "C. I. O. Leaders talk of 'Machine Guns' "—"Ernst bitter in Attack on Mayor Hague."—"Counsel Threatens New Invasion of Jersey City in Defense of Ban on C. I. O." The body of the article contains, among other things, the following:]

"Washington.—Secretary of Labor Perkins and Charles Fahey, General Counsel of the National Labor Relations Board, listened today as Morris Ernst, Counsel for the C. I. O. pleaded with the National Lawyers' Guild to join in a fight on 'legal dictatorship' in Jersey City to vote Hague down". Mr. Ernst is quoted as having said:

" 'You can write all the statutes you please, but if a mayor like Hague can tear them up you must go on a new tack. So far there has been no evidence of machine guns and I hope there will be none because I know we would be playing into the hands of Mayor Hague.

" 'Hague doesn't want unions in Jersey City because he wants to get the sweatships in there. If any employers hear these words I want to warn them, Hague's word is no damned good!

" 'A fight against the Jersey City situation is far more important than any other movement. It is the battle of every group. If Hague can tear up the Constitution and Bill of Rights now against the CIO, another mayor can do it against the American Federation of Labor or anyone else.

" 'You can take Hague as a symbol of dictatorship in the United States, and we've got to cut Hague down right now.' "

DEFENDANTS' EXHIBIT "D-3."

[Jersey City Bureau of Identification photograph and data re Bernard Weinkrantz.]

DEFENDANTS' EXHIBIT "D-4."

[Jersey City Bureau of Identification photograph and data re Charles Hansen.]

DEFENDANTS' EXHIBIT "D-5."

[Jersey City Bureau of Identification photograph and data re Jesse F. Suttka.]

DEFENDANTS' EXHIBIT "D-6."

[Jersey City Bureau of Identification photograph and data re Benjamin Field.]

DEFENDANTS' EXHIBIT "D-7."

[Jersey City Bureau of Identification photograph and data re Patrick B. Whelan.]

DEFENDANTS' EXHIBIT "D-8."

[Hudson County Bureau of Criminal Identification records on above.]

DEFENDANTS' EXHIBIT "D-9."

[National Republic Magazine of June 1938, at p. 28, showing photographs with this legend: "Congressman Jerry O'Connel, with Communist Herbert Benjamin and Socialist David Lasser confer on possible action against Mayor Hague of New Jersey."]

DEFENDANTS' EXHIBIT "D-10."

[Book of reports of the American Fund for Public Service known as "Garland Fund" setting forth the monies contributed by said fund as gifts and loans to various organizations between 1924 and 1934 inclusive, including the following: "Daily Worker"; "New Masses"; Brookwood Labor College; American Civil Liberties Union; National Association for Advancement of Colored People; Publication of Studies on American Imperialism; League for Indian Democracy; Federated Press; International publishers; Mooney-Billings Campaign; Southern Summer School for Women; Joint Action Committee; Paterson Silk Workers; International Ladies Garment Workers Union; Associated Textiles, Inc, Minneapolis; International Labor Defense; Russian Reconstruction Farms; Unity House, I. L. G. W. U.; League for Mutual Aid; Independent Shoe Workers Union; Il Martello Book Store; Seattle Labor College; American Indian Defense Committee; Max Eastman; Washington Conciliation Committee; Series of Studies on Russia; Art Shields and Esther Lowell—correspondence; Revolutionary Age; Labor Research Association; American Shoe Workers Protective Union; American Student Delegation to Russia; East Side Educational Center; Joint Board Furriers Union; Lenox Building, Washington, D. C.; Manumit School; New Republic, New York City; Il Nuovo Mondo; Vanguard Press, and also setting out the Bail issued by National Surety Company, cash bail funds and total losses and expenditures in connection with bail funds.

The said report also has printed therein the names of the Board of Directors and officers, as follows:]

BOARD OF DIRECTORS.

Roger N. Baldwin
Robert W. Dunn
Morris L. Ernst
Lewis S. Gannett
Benjamin Gitlow
Clinton S. Golden
James Weldon Johnson
Freda Kirchwey
Clarina Michelson
Norman M. Thomas

Officers

Roger N. Baldwin, President
Freda Kirchwey, Vice President
Robert W. Dunn, Secretary
Morris L. Ernst, Treasurer.

DEFENDANTS' EXHIBIT "D-11."

[Photostatic copy of several pages from "New Masses" of May 1932, which was offered for affidavit of ownership, which said affidavit is, as follows:]

"STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912, Of New Masses, published monthly at New York, N. Y., for October 1, 1930.

"State of New York: County of New York.

Before me, a Notary in and for the State and County aforesaid, personally appeared, Frances Strauss, who, having been duly sworn according to law, deposes and says that she is the Business Manager of the New Masses, and that the following is, to the best of her knowledge and belief, a true statement of the ownership, management, etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 411, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business manager are:

Publisher New Masses, Inc., 63 West 15 Street, New York City, Editorial Board: R. Evans, M. Gold, H. Gellert, L. Lozowick, M. Olgin, Managing Editor: Walt Carmon, 63 West 15 Street, N. Y. C., Business Manager; Frances Strauss, 63 West 15 St., N. Y. C.

2. That the owner is: The American Fund for Public Service, 2 West 13 St., N. Y. C., James Weldon Johnson, Pres., 2 West 13 St., New York City; Rob't. W. Dunn, Sec'y, 2 West 13 St., New York City; Morris L. Ernst, Treas., 2 West 13 St., New York City.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or

more of total amount of bonds, mortgagees and other securities are: None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner, and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by her.

Sworn to and subscribed before me this 24th day of March, 1932.

FRANCES STRAUSS, Business Manager.
Wm. E. Wimpey, Notary Public
(My commission expires March 30, 1933)

DEFENDANTS' EXHIBIT "D-14."

[Booklet published by National Republic Magazine captioned "Leninism—Lewisism", from which counsel for defendants read excerpts into the record.]

DEFENDANTS' EXHIBIT "D-15."
Clipping From "Newark Evening News," Tuesday, November 23, 1937.

CIO Prepared For Invasion

Mass Drive by 3,000 to Be Launched Monday in Jersey City

Final plans for their invasion of Jersey City were completed last night by New Jersey CIO leaders. A mass organization drive by 3,000 CIO representatives will be launched Monday afternoon as workers leave plants in the downtown area of the city.

Aside from field organizers of international unions, more than 2,800 volunteers will distribute leaflets in an area bounded by Bay and 17th streets, Jersey City. Of that number more than 2,000 will be from the International Maritime Union.

Other organizations which will send groups include the Civil Liberties Union, International Labor Defense, Workers Defense League and the Hudson County Committee for Civil Rights.

Many Arrests Expected

Those participating in the drive will assemble in Jersey City at a given point. They will then march to the city's largest depts. where leaflets will be handed out. Many arrests are expected in view of the city's ordinance prohibiting distribution of leaflets.

William J. Carney, CIO regional director and leader of the drive, will go to Washington tomorrow to confer with a member of the Senate Civil Liberties Committee. Carney said a member of the committee will be in Jersey City Monday as an observer.

"Showdown with Hague"

Carney added:

"Our plans for a showdown between CIO and I-Am-The-Law-Hague have been completed. We will go to Jersey City to organize in a peaceful manner.

which stockholders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner, and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by her.

Sworn to and subscribed before me this 24th day of March, 1932.

FRANCES STRAUSS, Business Manager
Wm. E. Wimpey, Notary Public
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"Showdown with Hague"

Carney added:

"Our plans for a showdown between CIO and I-Am-The-Law-Hague have been completed. We will go to Jersey City to organize in a peaceful manner. Whether this will be possible in the face of denials of civil rights in that city I am unable to say at this time.

"Workers in Hudson County have even been denied the right to strike. Police of Jersey City have tried to stop picketing without a court injunction, so easily obtained in Hudson County.

"When our organizers enter Jersey City they are stopped by police, threatened and searched. The contents of their cars are strewn over the highway. At our organization meetings police even threaten the workers wot attend. Hague has gotten away with this to long.

"The acts of various Jersey City officials may very well come within the scope of prosecution and indictment by the Federal Government. Various acts committed by Jersey City officals are crimes under the United States Criminal Code, punishable by a heavy fine and imprisonment up to ten years.

"Section 51 of the code prohibits conspiracy to injure persons in exercise of civil rights. Section 7 of the Wagner Act says employees shall have the right to join or assist labor organizations and to engage in concerted activities for mutual aid and protection.

"Hague may be the law in Jersey City, but he is not the law of the country."

NORMAN THOMAS GIVES COMMUNIST SALUTE

Socialists and Communists celebrated May Day in New York and prominent among the participants was Norman Thomas, a Socialist leader, who is shown (center) giving the Communist clenched fist salute and singing the "Internationale" along with the other Reds and Pinks surrounding him.

DEFENDANTS' EXHIBIT "D-16."
Newspaper Photograph From "Jersey Journal," May 2, 1938.

DEFENDANTS' EXHIBIT "D-17."

[Photostatic copy of clipping from New York Times of May 24, 1937, captioned " 'Red' C. I. O. Assailed In A. F. of L. Parley".]

DEFENDANTS' EXHIBIT "D-18."

[Clipping from New York American March 9, 1937, captioned: "C. I. O. Drive Hatched In Moscow, Green says".]

DEFENDANTS' EXHIBIT "D-19."

[Clipping from New York Times June 7, 1937, captioned: "Moscow Puts Hopes In C. I. O., Green says".]

DEFENDANTS' EXHIBIT "D-20."

[Clipping from New York Times March 29, 1937, captioned: "A. F. of L. Brands Sit-in Strike Illegal Property Seizure; Chrysler Deadlock Holds".]

DEFENDANTS' EXHIBIT "D-21."

[Clipping from New York Times January 31, 1937, captioned: "Court Test Today On Flint Sit-Down; Men In Plants Arm".]

DEFENDANTS' EXHIBIT "D-22."

[Clipping from New York Times dated January 15, 1937, captioned: "Four Thousand At Flint Ask Return To Work". "Mass meeting hears auto strike laid to minority of 5% and prays for peace".]

DEFENDANTS' EXHIBIT "D-23."

[Clipping from New York Times of March 4, 1937, captioned "Flint Prepares For New Fights as Crowds Pour Into Strike Zone".]

DEFENDANTS' EXHIBIT "D-24."

[Two clippings from New York Herald Tribune, one dated February 3, 1937, "C. I. O. Program Called Path To 'Sovietization'" (referring to a statement of Louis K. Comstock, president of the Merchants Association of New York), and the other captioned: "May Day—1937", being a letter to the editor by one Edward H. Weston, whoever he may be.]

DEFENDANTS' EXHIBIT "D-25."

[Clipping from New York Times of April 24, 1937, captioned: "Reports Reds In U. S. Are Supporting C. I. O.", referring to statement alleged to have been published by M. J. Olgin, New York correspondent of Pravda.]

DEFENDANTS' EXHIBIT "D-26."

[Clipping from New York Times of December 31, 1936 captioned: "Sit-down Close Four Big Plants of General Motors".]

DEFENDANTS' EXHIBIT "D-27."

[Certified copy of a report presented to Congress on January 17, 1931, by a Special Committee to investigate Communistic activities in the United States, referred to in the record as the "Fish Report". The following excerpts from this report are printed in lieu of the full report]:

"AMERICAN CIVIL LIBERTIES UNION.

The American Civil Liberties Union is closely affiliated with the communist movement in the United States, and fully 90 per cent of its efforts are on behalf of communists who have come into conflict with the law. It claims to stand for free speech, free press, and free assembly; but it is quite apparent that the main function of the A. C. I. U. is to attempt to protect the communists in their advocacy of force and violence to overthrow the Government, replacing the American flag by a red flag and erecting a Soviet Government in place of the republican form of government guaranteed to each State by the Federal Constitution.

Roger N. Baldwin, its guiding spirit, makes no attempt to hide his friendship for the communists and their principles. He was formerly a member of the I. W. W. and served a term in prison as a draft dodger during the war. This is the same Roger N. Baldwin that has recently issued a statement "that in the next session of Congress our job is to organize the opposition to the recommendations of the congressional committee investigating communism." In his testimony before the committee he admitted having said at a dinner held in Chicago that "The Fish Committee recommendations will be buried in the Senate." Testifying on force and violence, murder, etc., the following is quoted:

The Chairman. Does your organization uphold the right of a citizen or alien—it does not make any difference which—to advocate murder?

Mr. Baldwin. Yes.

The Chairman. Or assassination?

Mr. Baldwin. Yes.

The Chairman. Does your organization uphold the right of an American citizen to advocate force and violence for the overthrow of the Government?

Mr. Baldwin. Certainly; in so far as mere advocacy is concerned.

The Chairman. Does it uphold the right of an alien in this country to urge the overthrow and advocate the overthrow of the Government by force and violence?

Mr. Baldwin. Precisely on the same basis as any citizen.

The Chairman. You do uphold the right of an alien to advocate the overthrow of the Government by force and violence?

Mr. Baldwin. Sure; certainly. It is the healthiest kind of thing for a country, of course, to have free speech—unlimited.

The American Civil Liberties Union has received large sums from the Garland fund, of which Roger N. Baldwin is one of the directors. During the trial of the communists at Gastonia, not for freedom of speech, of the press, or assembly, but for a conspiracy to kill the chief of police, of which seven defendants were convicted, the A. C. L. U. provided bail for five of the defendants, amounting to $28,500, which it secured from the Garland fund. All of the defendants convicted, jumped their bail and are reported to be in Russia. The $28,500 bail was forfeited, including $9,000 more advanced by the International Labor Defense.

A committee of the New York State Legislature, back in 1928, reached the following conclusion in regard to the American Civil Liberties Union:

"The American Civil Liberties Union, in the last analysis, is a supporter of all subversive movements; its propaganda is detrimental to the interests of the State. It attempts not only to protect crime but to encourage attacks upon our institutions in every form."

Your committee concurs with the above findings.

The principles of free speech, free press, and free assembly are worthy of an organization that stands for our republican form of government, guaranteed by the Constitution, and for the ideals of Washington, Jefferson, and Lincoln, instead of an organization whose main work is to uphold the communists in spreading revolutionary propaganda and inciting revolutionary activities to undermine our American institutions and overthrow our Federal Government.

. . . . . .

International Labor Defense

(Also referred to under "Activities in Industry")

The International Labor Defense was formed in 1925 with headquarters in Chicago, as a communist organization to defend class-war prisoners and for the repeal of all sedition and criminal syndicalist laws. It later moved to New York City. It provides legal aid to all communists arrested for revolutionary activities and helps to secure bail for them. In addition, its program is as follows:

(1) Defense of foreign-born workers and against deportation.

(2) Gives publicity to persecution of workers.

(3) Fights for the right of workers to organize for self-defense.

(4) Support to prisoners and families.

The active head of the International Labor Defense is J. Louis Engdahl, who holds the position of secretary general. He is an American citizen and a gradu-

ate of the University of Minnesota. He is one of the most aggressive and active communists in the United States. He has been to Russia several times and has served on the central executive committee of the Communist Party of America in this country. Last November he ran on the communist ticket in New York for lieutenant governor. At one time he was editor of the Daily Worker. In addition to being secretary of the International Labor Defense, he is the editor of the Labor Defender, a monthly communist magazine and the official organ of the International Labor Defense, with a circulation of over 2,000. It is revolutionary, outspoken in appeal in behalf of communist principles against American institutions.

. . . . . .

THE GARLAND FUND.

The American Fund for Public Service (Inc.), located at 2 West Thirteenth Street, New York City, generally known as the Garland Fund, has helped to keep alive the American Civil Liberties Union, International Labor Defense, the communist, legal defense committee headed by J. Louis Engdahl, the Workers' Communist School in New York City, and the Pioneer camps, as well as the Daily Worker and many other communist and advanced socialist and radical and ultra-radical organizations. This fund, in an original amount of about $900,000, was established in 1922 by a rich son of a Massachusetts industrialist and increased in amount, due to enhanced values of the stock—First National Bank of the City of New York—held by the fund, up to nearly $2,000,000. Of this sum, approximately $600,000 is left. The directors of the Garland Fund are: Roger Baldwin, Robert W. Dunn, Morris L. Ernst, Elizabeth Gurley Flynn, Lewis S. Gannett, Benjamin Gitlow, Clinton Golden, James Weldon Johnson, Freda Kirchway, Clarina Nichelson, Scott Near-

ing and Norman H. Thomas. The following is a partial report of the loans and expenditures from the Garland fund to communist organizations (approximated):

The Daily Worker (official organ of the Communist Party of the United States)	$ 17,600.
Passaic strike funds (communist strike)	25,318.
Passaic bail bonds deposited for communist strikers	45,000.
Workers' School at New York	11,122.
International Labor Defense	14,850.
Sacco-Vanzetti committee	17,000.
All-American Anti-imperialist League	1,000.
Novy Mir (Russian communist weekly newspaper)	500.

The following "loans" were made to communist organizations (it will be noted that it has been the custom to cancel a greater part of such "loans" after a few years):

The Daily Worker	$ 31,375.
International Labor Defense	35,600.
Sacco-Vanzetti committee	5,000.
All-American Anti-imperialist League	100,000.
Novy Mir	3,000.
Trade Union Educational League (now liquidated)	1,500.
Young Workers' League (now Young Communist League)	3,200.

The above figures were taken from the 1928 report of the American Fund for Public Service, which is the last report filed by the fund, given in full in part 1, volume 4, of the committee hearings."

. . . . . .

"The following is part of the testimony of William Z. Foster, twice candidate of the Communist Party for President of the United States, before the committee, in which he explains some of the principles of his party:

The Chairman. Would you mind stating to the committee the aims and principles of the Communist Party?

Mr. Foster. The aims and principles of the Communist Party, briefly stated, are to organize the workers to defend their interests under the capitalist system and to eventually abolish the capitalist system and to establish a workers and farmers government.

The Chairman. Now, can you tell us more definitely if the principles of the Communist Party, as advocated in this country, or anywhere else, are the same?

Mr. Foster. Yes.

The Chairman. Does the Communist Party advocate the confiscation of all private property?

Mr. Foster. The Communist Party advocates the overthrow of the capitalist system and the confiscation of the social necessities of life; that is, the basis industries and other industries for producing the means of livelihood for the people. By the property of individuals, personal belongings, and so on, no; that is, in the sense of their personal property.

. . . . . .

The Chairman. Does your party advocate the abolition and destruction of religious beliefs?

Mr. Foster. Our party considers religion to be the opium of the people, as Karl Marx has stated, and we carry on propaganda for the liquidation of these prejudices amongst the workers.

. . . . . .

The Chairman. Have you been to Russia?

Mr. Foster. Yes. Eight or nine times.

The Chairman. You are familiar, then, with the workings of the Communist Party in Russia?

Mr. Foster. Reasonably.

The Chairman. Well, can members of the Communist Party in Russia be married in the church and maintain religious beliefs of that nature, and practice them?

Mr. Foster. My opinion is that a member of the Communist Party of the Soviet Union who would be married in a church would not be of any value to the Communist Party.

The Chairman. Could he maintain his membership in the party?

Mr. Foster. He would not.

The Chairman. He would be put out of the party?

Mr. Foster. Eventually, if not for that specific act.

The Chairman. Would it not be the same in this country?

Mr. Foster. As I stated before, workers who would be so imbued with religious superstitions that they would be married in a church would be of no value to the Communist Party.

The Chairman. And the same thing would happen to them in this country that happens to them in Russia?

Mr. Foster. Of course.

. . . . . .

The Chairman. Do the communists in this country advocate world revolution?

Mr. Foster. Yes; the communists in this country realize that America is connected up with the whole world system, and the capitalist system displays the same characteristics everywhere—everywhere it makes for the misery and exploitation of the workers—and it must be abolished, not only on an American scale but on a world scale.

. . . . . .

The Chairman. They are opposed to our republican form of government?

Mr. Foster. Most assuredly.

The Chairman. And they desire to overthrow it through revolutionary methods?

Mr. Foster. I would like to read from the program of the Communist International at this point. The Communist International Program says——

Mr. Bachmann. From what page are you reading?

Mr. Foster. Page 34. "The conquest of power by the proletariat does not mean peaceful capturing of ready-made bourgeois state machinery by means of a parliamentary majority. The bourgeoisie resorts to every means of violence and terror to safeguard and strengthen its predatory property and political domination. Like the feudal nobility of the past, the bourgeoisie can not abandon its historical position to the new class without a desperate and frantic struggle; hence the violence of the bourgeoisie can only be suppressed by the stern violence of the proletariat.

The Chairman. Just what is the Third International?

Mr. Foster. The Communist International is the world party of the communist movement.

The Chairman. Is the Communist Party of the United States connected with it?

Mr. Foster. It is.

. . . . . .

The Chairman. Now, if I understand you, the workers in this country look upon the Soviet Union as their country; is that right?

Mr. Foster. The more advanced workers do.

The Chairman. Look upon the Soviet Union as their country?

Mr. Foster. Yes.

The Chairman. They look upon the soviet flag as their flag?

Mr. Foster. The workers of this country and the workers of every country have only one flag and that is the red flag. That is the flag of the proletarian revolution; it was also, incidentally, the flag of the American Revolution in its earlier stages. The red flag has been the flag of revolution for many years before the Russian revolution.

The Chairman. Could not you answer a little more definitely and specifically whether they owe any allegiance to the American flag?

Mr. Foster. I have stated my answer.

The Chairman. I do not want to force you to answer if it embarrasses you, Mr. Foster.

Mr. Foster. It does not embarras me at all. I stated very clearly the red flag is the flag of the revolutionary class, and we are part of the revolutionary class.

. . . . . .

"The committee is convinced that the surest and most effective way of combating communism in the United States is to give the fullest possible publicity to the fundamental principles and aims of the communists, which are the same throughout the world, as they are not likely to prove acceptable to any considerable number of American citizens, unless camouflaged by either extraneous issues, such as unemployment insurance.

. . . . . .

"The following is a definition of communism, a world-wide political organization advocating: (1) Hatred of God and all forms of religion; (2) destruction of private property, and inheritance; (3) absolute social and racial equality; promotion of class hatred;

(4) revolutionary propaganda through the Communist International, stirring up communist activities in foreign countries in order to caus strikes, riots, sabotage, bloodshed, and civil war; (5) struction of all forms of representative or democratic governments, including civil liberties, such as freedom of speech, of the press, of assembly, and trial by jury; (6) the ultimate and final objective is by means of world revolution to establish the dictatorship of the so-called proletariat into one world union of soviet socialist republics with the capital at Moscow."

DEFENDANTS' EXHIBITS "D-28" AND "D-29."

[Pleadings in the mandamus proceedings brought by Norman H. Thomas, Relator, against Daniel Casey, Director of Public Safety of Jersey City, Respondent, in the New Jersey Supreme Court, consisting of alternative writ of mandamus and return to said alternative writ of mandamus.]

[fols. 83-85] IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

In Equity

COMMITTEE FOR INDUSTRIAL ORGANIZATION et al., Plaintiffs,

v.

FRANK HAGUE et al., Defendants

Stenographer's Minutes

APPEARANCES

Spaulding Frazer, Esq., David Stoffer, Esq., Morris L. Ernst, Esq., of the New York Bar, for the Plaintiffs.

Hon. James A. Hamill, Joseph Glavin, Esq., Edward O'Mara, Esq., Charles E. Hershenstein, Esq., for the defendants.

Before Hon. William Clark, Judge, at the Post Office Building, Newark, N. J., on Thursday, May 26, 1938 at 10:30 A. M.

COLLOQUY

The Clerk: Is the C. I. O. case ready?

Mr. Frazer: Yes.

The Clerk: Ready, both sides?

Mr. Hamill: We are ready.

The Court: Just a minute, Mr. Hamill; I have some criminal cases; I will dispose of them first, I think. That will make it more convenient.

* * * * * * *

[fol. 86] The Court: All right, Mr. Hamill; I interrupted you to take those cases.

Mr. Hamill: Your Honor please, I wish to address to this honorable court a motion. This is a bill of complaint comprising nineteen pages of typewritten matter, exclusive of twenty-three pages of exhibits.

The Court: I have it before me.

Mr. Hamill: Yes, sir; containing copies of ordinances and letters purporting to have been written and to have passed between the attorneys for the plaintiffs and some of

them and certain officers of the city. The bill, after setting out in the first five paragraphs a statement of who the plaintiffs and the defendants are, proceeds in the 6th and 7th paragraphs to lay the necessary allegations bringing them within the right to be here in the United States Court.

If your honor desires me to do so, I shall give to the court a summary of what is contained in the bill. It sets out various grievances, wrongs or injuries alleged to have been suffered by the plaintiffs at the hands of the defendants, who are, as the court knows, the Mayor of Jersey City, the Director of Public Safety and the Chief of Police of Jersey City. Then the plaintiffs set out certain requests in the prayer of their bill, and I propose to go over the prayer of the bill, making upon each of the paragraphs and sub-paragraphs containing the prayer, such observations or comments or suggestions as I deem proper at this time. Of course, I might say right now that we deny that we have ever done the things alleged to have been done by us in the various paragraphs of the bill. We have done that in our answer and that denial is of record.

The Court: I have the answer.

Mr. Hamill: But in any event the complainants or plaintiffs, as they call themselves in the bill, the complainants [fol. 87] could not obtain any more relief than they pray for in the prayer of their bill.

Now, I call your attention to subdivision A of the prayer of the bill. It reads:

"They pray that the defendants, their agents, servants, employees, officers and subordinates under the direction, supervision or control of the defendants or any of them, be perpetually restrained and enjoined by the injunction of this court as follows:

"(A) From interfering in any manner with the free access by plaintiffs or by any persons acting in sympathy or in concert with plaintiffs to, upon and through the public streets, highways and thoroughfares of Jersey City."

Now, we have not interfered and will not interfere with the free access by the plaintiffs or by any persons acting in sympathy or in concert with them, to, upon and through the public streets, highways and thoroughfares of Jersey City, and never did so long as they exercised this constitutional right in a legal and orderly manner.

The Court: That is interference with the public streets, is that that paragraph?

Mr. Hamill: Yes, sir. Sub-section C,—I shall take them, not exactly seriatim, but take them in the order in which, in my judgment, I can present them the better to this court. Sub-division C, "from interfering in any manner with any of the plaintiffs in the distribution by them to persons willing to receive the same, on the public streets and highways of Jersey City, of literature concerning the Committee for Industrial Organization or the National Labor Relations Act, or announcing meetings to be held under the auspices of plaintiffs or the Committee for Industrial Organization."

The Court: That is the distribution of literature?

Mr. Hamill: Yes, sir.

The Court: I am following it.

[fol. 88] Mr. Hamill: And this is my observation: This paragraph or sub-paragraph has to do with the distribution of literature and circulars on the public streets of Jersey City. Up to the time when the United States Supreme Court rendered its decision in the Griffin case, Jersey City did, for reasons it considered sound and proper——

The Court: I have the Griffin case here.

Mr. Hamill: —prevent,—yes, sir, the distribution of circulars without a permit. This was done under the provisions of an ordinance passed as far back as January 22, 1924, and this ordinance was upheld by the Supreme Court of this state. When, however, the case against the Town of Griffin in Georgia was decided by the United States Supreme Court, Jersey City immediately acceded to it, and since that time there has been no interference with the distribution of literature and will not be, so long as it is carried on in an orderly manner, and no attempt is made to force pamphlets, circulars or literature upon persons unwilling to receive such literature. Therefore this matter is disposed of.

The Court: The words of the Supreme Court are, Mr. Hamill——

Mr. Hamill: Sir?

The Court: The words of the Supreme Court are, as you probably know: "with the maintenance of public order, by involving disorderly conduct, molestation of inhabitants or the misuse and littering of the streets."

Mr. Hamill: And of course we obey that decision and will obey it and have never broken it after the announcement or promulgation of the decision, and if a permit was required

it was in accordance with the provisions of an ordinance afterwards declared to be invalid by the Supreme Court by implication in passing upon the ordinance in the Griffin case.

[fol. 89] Sub-division D: Now, this sub-division asks that the defendants be restrained from intimidating or interfering in any way with any owner or lessee of meeting places or halls in the City of Jersey City, for the purpose of preventing such owner or lessee from permitting the use of any such meeting place or hall by plaintiffs for meetings or for any other lawful purpose; and from intimidating or interfering in any way with any owner or lessee of any meeting place or hall in Jersey City for the purpose of coercing such owners or lessee, directly or indirectly, to refuse to allow any of the plaintiffs the use of their premises for any lawful purpose.

The Court: That is the private hall.

Mr. Hamill: This is the part of the prayer referring to meetings in halls. That is something we are satisfied cannot be proved by the plaintiffs for the simple reason, and of course there is merely my statement for it, which we believe we will sustain, that we have never done such a thing. However, let it be stated now, that Jersey City has not and will not intimidate or interfere in any way with any other or lessee for the purpose of coercing such owners or lessees directly or indirectly from holding a meeting. And as a matter of fact this right was upheld by Vice Chancellor Fielder in a decision which he rendered in a similar case. The defendants recognize the right of——

The Court: I have that here.

Mr. Hamill: —orderly assemblage for any lawful purpose.

The Court: I have Vice-Chancellor Fielder's decision.

Mr. Hamill: Yes, sir, "in other than public places, and will not in any way interfere with such meetings as long as a breach of the the peace is not caused thereby." In order to clear the atmosphere of any charges which have been pretty freely made of late on this subject, I want it to be clearly understood that we deny, as we have already denied, that we have ever done this.

[fol. 90] Now, sub-division E, Press: That we be enjoined from seizing or destroying any circulars or other written or printed matter.

The Court: That is the same thing.

Mr. Hamill: Or emblems in the possession of plaintiffs or any other persons acting in sympathy or concern with plaintiffs or any of them.

The Court: That is the same——

Mr. Hamill: If such a thing has been done, it has been done without the knowledge or consent of the authorities or these defendants and we concede that this should not be done.

The Court: That is under distribution.

Mr. Hamill: "Subdivision F, Press: That the defendants be enjoined from interfering in any manner with plaintiffs or with any persons acting in sympathy or in concert with plaintiffs in the holding of any peaceful meetings organized by plaintiffs in the City of Jersey City."

We have never interfered with the holding of any peaceful meetings in any public hall or in any place other than a public place, provided a breach of the peace was not caused thereby, and will continue that policy in the future. This statement has no reference to meetings, of course, in public places or public streets, for which a permit is, and will be, unless this honorable court should decide otherwise, required by the authorities of Jersey City under the ordinance.

"Sub-division G, Press: That the defendants be enjoined from interfering in any manner with plaintiffs or with any persons acting in sympathy or in concert with plaintiffs in their peaceful conduct of organization activities within the City of Jersey City." We have no objection and never have had any objection to the carrying on peacefully of organization activities within the City of Jersey City. This has been and will continue to be our policy.

[fol. 91] Sub-division H is a general clause praying that we, "the defendants be restrained from ordering, commanding, directing, assisting, aiding or abetting in any manner whatsoever any person or persons to commit any of the acts enjoined by this honorable court."

The Court: Then, as I understand it, Mr. Hamill, on five points, as I have noted them; Jersey City, represented by you, is willing to consent to an injunction?

Mr. Hamill: Well, we will either consent to an injunction or to a stipulation on the record by counsel to whatever, in your honor's judgment should be the appropriate order or remedy in this court for the situation which I have brought to the attention of the court, as stated in the bill of complaint.

The Court: Well, as it would have to be an official pronouncement of the court, I should suppose it would have to come in the form of a court order.

Mr. Hamill: Now, your honor has called attention to the section or sub-division or sub-paragraph relating to meetings in public streets. May I make some observations on that? I have saved it for the last, because it seems to us to be the least meritorious question involved in this equity suit.

The Court: Well, you mean disputed question, rather than meritorious?

Mr. Hamill: Beg pardon?

The Court: Disputed question, you mean rather, don't you?

Mr. Hamill: Well, if the court disagrees with me, of course I will not press the point and I will accept the word "disputed." Of course we do dispute it.

"B: From interfering—I am reading now sub-division or sub-paragraph B of the prayer—"from interfering in any manner with any of the plaintiffs in the holding of peaceful meetings organized by them or under their aus- [fol. 92] pices for the purpose of discussing the work of the Committee for Industrial Organization, and the organization in Jersey City of trade unions to be affiliated with such Committee."

The Court: Mr. Frazer, is that B,—it is D, isn't it?

Mr. Frazer: D was the one you omitted.

Mr. Hamill: B is the one.

Mr. Frazer: D was the one you omitted.

Mr. Hamill: Yes, requiring permits for meetings on the public street.

The Court: This is the one, paragraph B.

Mr. Frazer: I think it is B, Mr. Hamill.

Mr. Hamill: Yes, I do too. Thank you. There is not the slightest doubt about the fact that Jersey City demands that a permit to hold such meetings be first obtained from the Director of Public Safety. This is in accordance with an ordinance adopted April 15, 1930 by the City Commission of Jersey City, and that ordinance requires that application be made to the Director of Public Safety, and he is authorized to refuse to issue the permit—I am reading from the ordinance—"when, after investigation of all the facts and all circumstances pertaining to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that permit shall only be refused for

the purpose of preventing riots, disturbances or disorderly assemblage."

This, we contend is a proper, legal, valid, sound and reasonable exercise of the police power. This vests the Commissioner of Public Safety with the right to refuse the permit when and in his reasonable discretion, properly used, he believes that riots, disturbances or disorderly assemblage would be the result of his issuing it.

The Court: Might I interrupt here, Mr. Hamill? Does it provide for public hearings with respect to the issuing of a permit?

[fol. 93] Mr. Hamill: Sir?

The Court: Does it provide for public hearings with respect to the issuing of a permit?

Mr. Hamill: No, it does not provide for public hearings. We shall submit a copy of this ordinance to your Honor so that your Honor will be able to read it in full.

This, we contend, is a matter cognizable not in a court of equity, but in a court of law. We contend that anyone aggrieved by the decision or determination or refusal on the part of the Director of Public Safety to grant the requested permit, has a full, adequate, complete remedy at law by mandamus or by certiorari; and that the fact that he does possess this remedy excludes him from the right to come in and ask a remedy in a court of equity. As a matter of fact, the plaintiffs or their,—shall I say their "allies, or coadjutors, or affiliates" have recognized by implication this very thing, because in the case of Mr. Thomas, Mr. Vanderbilt, his attorney, notified the Law Department of Jersey City that he would apply to the Chief Justice for a writ of certiorari to test the right of the Director of Public Safety to refuse, as he did refuse, the issuance of a permit to Mr. Thomas. However, I am not attempting to argue this point at length or at the present time. I want to call the attention of the court to the fact that there is not a great deal of doubt as to what are the facts in this bill, or I shall put the matter this way: that the facts necessary to enable the court to reach a decision are practically such facts as would not be denied, and they can be easily admitted.

The Court: You mean the facts, now, Mr. Hamill, with respect to public meetings?

Mr. Hamill: Oh, yes, the facts with respect to public meetings. There isn't any doubt but that applications have been

made, and that we have refused the permit. As a matter of fact, I think that all of those facts are matters of record, [fol. 94] letters by the attorneys of the various parties and letters back from either the Corporation Counsel or the Director of Public Safety; so that there could not be any doubt and will not be any doubt about these facts. And therefore the motion which I now desire to address to the court is this one; that this matter be laid over until such reasonable day as to your honor may seem meet, to enable us and the complainants to file briefs with your honor covering the situation regarding the issuance of permits to hold meetings in the public streets covering the sub-paragraph of the bill relating to that situation.

We will argue, of course, that the complainant has no right in a court of equity, and shall set up such other contentions as we think should be brought to the attention of the court, not only on that matter, but on all of the other matters stated in the bill. And I shall therefore repeat the motion I have enunciated, by saying that we therefore move that the court grant an adjournment for the purpose of enabling counsel on both sides to submit briefs on the paragraph which deals with the holding of meetings in public streets, and on such other paragraphs of the bill as they may wish to bring to the attention of the court.

The Court: Before we get to that, Mr. Hamill, I think it would be wise to at least submit an order on the undisputed points before we get to the disputed point, that word "disputed" being the word I used. I think it would be as well to submit an order on the undisputed points. Is that agreeable?

Mr. Frazer: Well, I would like to be heard, if your honor please, in reply to what it seems to me is one of the most unusual motions I have ever heard in my practice.

The Court: Well, I haven't passed on it so I don't see that it is necessary for you to be heard on it.

Mr. Frazer: I beg pardon?

[fol. 95] The Court: I say I am now addressing myself to the undisputed points. Then I would be glad to hear you on the other ones.

Mr. Frazer: May I say that Mr Hamill's presentation of what he calls "undisputed" points is not necessarily undisputed on my part.

The Court: "Disputed" point was my word.

Mr. Frazer: Mr. Hamill has made some very broad concessions, I am willing to admit, but that they go the whole way, and that they are satisfactory to the plaintiffs I cannot concede without being heard on it. If your honor is going to say as to the form of the order, should it be granted, I wouldn't object.

The Court: I wouldn't say anything, Dean Frazer, until we see the form submitted. That is why I was suggesting that the form be submitted right now if that is possible?

Mr. Frazer: I can have no objection to the submission of a form, sir.

Mr. Hamill: When you say "right now," you don't mean at this very instant? You mean today or tomorrow, so that we may look it over?

Mr. Frazer: If there is any basis for an adjournment——

The Court: I haven't granted any adjournment yet, Dean Frazer?

Mr. Frazer: No, but I understand Mr. Hamill is suggesting that there should be, and he is going to submit some time in the indefinite future what he conceives should be the form of the final decree; it seems to me before we get to that point, Mr. Hamill should have the paper before the court for consideration, and that means immediately, I should think.

Mr. Hamill: I am putting the matter in the form of a motion because it would be improper to put it to the court [fol. 96] printed, in the form of a suggestion, and if that view which I took the liberty to express to the court, meets with the approval of the court, then we shall at once proceed to draw up the necessary papers; I mean that is my position in the matter.

The Court: As I understand it, Dean Frazer, Mr. Hamill conceded the legal validity of five points—I put them down roughly, and agreed to an order covering those five points; as I understand him, he did not concede the legal validity of the 6th point, namely the question of public meetings. He suggested as to that, that it was a legal question and required briefs and so on; I am not even addressing myself to that at all, because I don't know enough about it, whether it is just a legal question, or whether it is not just a legal question. I am only talking now about the five points which he conceded should be covered by an order of this court.

Mr. Frazer: Now, may I say in that regard—by the way, Mr. Hamill, you were reading,—might I have a copy of your——

Mr. Hamill: Yes, in order to direct my thoughts.

Mr. Frazer: I think it might direct my thoughts, too.

Mr. Hamill: Congressmen, you know, have a habit of being prolix and discursive and I wrote it down.

Mr. Frazer: As to the five points which he concedes, the concession is based upon what, unless I am to disbelieve a large number of witnesses whom I have heard during the past few days, in preparation for this trial, is a complete misstatement of the facts.

The Court: Supposing that to be so, Dean Frazer, does that concern us?

Mr. Frazer: I think very much so.

The Court: In other words, if the order is consented to, does it concern us what preceded it?

Mr. Frazer: Yes, very much sir.

The Court: In what way, unless they are statements in [fol. 97] the form of affidavits which require some kind of action?

Mr. Frazer: The order, I take it, must have something to base itself upon; we are here asking relief in this court upon certain bases of fact which we allege. If those bases of fact——

The Court: I understand Mr. Hamill conceded you the relief. If I am wrong about that——

Mr. Frazer: He doesn't concede me the facts upon which the relief is based; I have a right to prove my case and show the facts upon which we are seeking relief; otherwise if those facts be not true, we have no business to be in this court at all.

Mr. Hamill: Mr. Frazer, may I interrupt you by saying of course we have to admit that sufficient facts are true to base an order complying with the prayer.

Mr. Frazer: It has been rather notorious, may it please the court—if we take Mr. Hamill's paper here, he says "we have never interfered and will not interfere with the free access by plaintiffs or by any person acting in sympathy or in concert with them, to, upon and through the public streets, highways, and thoroughfares of Jersey City." Now, that is the basis, a statement of the fact that they have not done so, is the basis for signing a decree that they shall not do so. We state that our witnesses will

show that that interference has been going on continuously, arbitrarily, and we have a right to prove that, sir. The same is true with the distribution of literature, interference with it, where no possible grounds can be alleged of littering streets, disorderly conduct or anything of the kind; the taking of literature out of automobiles, when it was not even being distributed, the improper searches on the streets, all of those things, interference with personal liberties of the most outrageous character, all of which are denied in this proposition of peace, and an opportunity to show the reason we were in this court, if his proposition be acceded to, denied us.

[fol. 98] The same may be true of the hall-hiring episode; the court can take judicial notice of the fact that in Jersey City there is a very powerful political machine, and that pressure can be brought upon owners in a way which is indefinite, hard to trace, but we can show, we intend to show in our proof, by a series of incidents which are so coincidental in character that the refusals of halls can be based only upon some theory of discrimination and intimidation. So we could go down with the other meetings, interference with the organizational activities and the like, all of which we are prepared to prove by a large number of witnesses.

If we come down, however, to the disputed phase of Mr. Hamill's argument, which he says is in dispute, we are entering the field of law, I take it.

The Court: And fact I should say.

Mr. Frazer: I beg pardon?

The Court: Both law and fact, I should suppose.

Mr. Frazer: Well, as far as he is concerned, it is primarily one of law.

Mr. Hamill: I don't think there will be any difficulty as to the facts; there will be no difficulty as to what actually took place.

Mr. Frazer: I understand he is now coming in to contest the jurisdiction of this court as a court of equity. These papers were filed in the early part of January; they had full notice of it; the answer sets up no such defense; there has been no motion addressed to the papers.

The Court: Does the answer—I have the answer here; does it, Mr. Hamill?

Mr. Hamill: The question of jurisdiction of subject matter can be raised at any time, can be raised after the close of

the plaintiff's case, your honor please. "There is a further [fol. 99] separate and distinct defense in point of law arising upon the face of the bill of complaint herein: defendants say that the only question of law involved was the alleged unconstitutionality of the several ordinances and statutes referred to in the bill of complaint and relied upon by plaintiffs in support of their alleged constitutional rights, which this court will not assume jurisdiction to determine."

Mr. Frazer: As your honor says, in any event, there is a mixed case of fact and law. I think that is the key——

The Court: Well, the facts on the disputed point or what I call the "disputed point" are in dispute so I will, of course, hear testimony. I don't know enough about it to know if they are in dispute or not.

Mr. Frazer: On the disputed point?

The Court: Yes.

Mr. Frazer: Of course if Mr. Hamill says that there is no dispute on the facts, and that this is a mere question of law, then it seems to me there was no reason for him to wait until this moment, after the case has been prepared, to raise such a question. But be that as it may, I insist that there are so many factors entering this case which involve not only law, but facts which would affect the jurisdiction of this court, that the only way this court could determine such a motion, if there be any merit in it on any ground, is by hearing the facts and considering the facts in conjunction with the law. Mr. Hamill has pointed out the fact that the ordinance to which he refers has been judicially sustained——

The Court: Which ordinance do you mean, Dean Frazer?

Mr. Frazer: The one in relation to the public meetings.

Mr. Hamill: The one I referred to was in relation to circulars, Mr. Frazer.

Mr. Frazer: Also I understood you to say the one in relation to public meetings.

[fol. 100] The Court: No, that has never been litigated, Dean Frazer, I don't think.

Mr. Hamill: It is the circular ordinance Mr. Frazer.

The Court: We are going to litigate it now and settle it.

Mr. Hamill: While you are looking there, here is an other paragraph of the answer: "For the first, further separate and distinct defense defendants allege that the plaintiffs have an adequate, complete and speedy remedy at law for viloation of their rights as alleged in the bill of complaint."

Mr. Frazer: I see that I am in error.

The Court: We don't wish to be technical, Dean Frazier; if there is any disputed question of fact on the public meetings, I think we should have those questions of fact shown.

Mr. Frazer: Well, now, of course, there are matters of this kind: assuming Mr. Hamill's argument, for a moment, if the situation be one which indicates discrimination, as for instance in the well-known California Laundry case, where there is a direct appeal to the Federal authorities to prevent the discriminatory enforcement of ordinances, there is a mixed question of fact and law, an ordinance good enough in itself, an ordinance unconstitutional and improper in the method of enforcement. That is a question which your Honor cannot possibly determine until the facts have been brought out, if that becomes the legal issue in the case.

The Court: Well, the leading book on Municipal Corporations seems to indicate in this language: "The use of city streets for conducting parades"—and I suppose that would apply to public meetings—"thereon, is a legitimate subject of municipal regulation, although ordinances for that purpose must be in general terms and apply to all alike." That seems to be the more specific question.

[fol. 101] Mr. Frazer: Yes, the permits may be discriminatorily refused, even though there may be a right to regulate for public safety, for traffic regulation and things of that kind. We don't dispute that fact, but we do dispute the fact that they have a right arbitrarily to refuse all meetings in public to us when they are allowing meetings of even greater number to be held at the same place for political purposes, and for socalled veteran organizations. We refuse to concede that they have a right to deny us a permit to speak in public on account of the fear of riot and bloodshed, when, as part of their organization they are staging meetings of socalled veterans to bring about bloodshed if we do meet. Those are all matters which are matters of proof and which I expect to prove here. And there is even a strike against this court; there is another mass meeting the public press says, in the Armory to-night, to protest——

The Court: Well, I would hardly think it was directed at this court.

Mr. Frazer: Well, I don't know, sir, but it is remarkable that it is coincidental with this case that the veterans are again being summoned, and I insist that we have a right to go on with our proofs.

The Court: Well, I said, Dean Frazer, if I can settle first the injunction with respect to the other points, that if you then wish to go on with your proof, I will be glad to hear it, not "glad"—that is a bad word,—it would be my duty to hear it.

Mr. Frazer: May I say to your honor that we are here prepared to go on; we have nothing in the form of a definite order of injunction; we have nothing except statements of general principles; when we get through with the general principles, it may be that we are unable to agree in terms; it may be——

[fol. 102] The Court: That may be so. Wouldn't it then be wise to take up the question of agreeing in terms at once?

Mr. Frazer: I think not, sir. I think the thing to do, and I believe that I have a right to insist on it, is to go on with the trial of my case. He comes in here with no particular offer; he comes in with a general statement, "we have never done things" which we insist they have always done. He makes his concessions upon what we insist is a false assumption.

The Court: Let's assume that they have always been done; the question is the terms of the order, isn't it?

Mr. Frazer: The terms of the order in part, but may I call your honor's attention to this, that the breadth of our proof may be very much limited by removing from the bill of complaint certain lines of allegation, which in themselves form a part of the general picture——

The Court: Well, after all——

Mr. Frazer: —going to the other issues in the cause that are all interrelated, sir.

The Court: Dean Frazer, this is a court, and the court has to deal with legal propositions. Now, if the injunction is satisfactory to both sides, I don't see what the court's concern is with what happened leading up to it in any case, this or any other case.

Mr. Frazer: Your honor is assuming a satisfactory injunction to both sides.

The Court: I am not assuming it at all; I am only suggesting that we might make an effort now to arrive at a satisfactory injunction on the undisputed points. It wouldn't take long, I shouldn't think.

Mr. Frazer: And forego the proof which we have prepared?

The Court: Not on the disputed points.

Mr. Frazer: I would make the suggestion sir, there is a competent group of counsel at the counsel table; there is a competent group here at my counsel table, that those [fol. 103] who are going to be actively engaged in the trial proceed with the trial and let the others go out, get together and draw something, and while we are going on with the trial, these matters may be made a matter of treaty, and if, by the conclusion of the case, everything is settled nicely between them in the form of a consent decree, very well. That is another picture. But to refuse——

The Court: Would it take more than an hour to draw an injunction? I will draw one in an hour for you.

Mr. Frazer: I think so, when you come to the nice terms of the injunction, I have very little confidence that the language will be as broad as we shall insist we are entitled to, and if it be not as broad as we are entitled to, we have a right to go on with our case, and your honor cannot compel us, without proof, to accept an injunction which we do not consent to.

The Court: No, that is perfectly true, and I have no such desire.

Mr. Frazer: I would therefore respectfully ask that we may go on with our case, and if the injunction proposition is to be made, that counsel start their parleys and see what they can do about it while the case goes on.

Mr. Hamill: No, if your honor please, so far as the facts in this case are concerned, I do not anticipate there will be the slightest difficulty in agreeing on all of the facts necessary to sustain a proper injunction, and let me say now what I didn't intend to say: Mr. Frazer has reproached me in a kindly way, of course, he couldn't do it any other wise, knowing him as I do,—and let me say in an equally kindly way that this bill of complaint, well, I was going to say is an old rag bag, filled with every kind of a fact near and far, relevant or irrelevant, intimate and remote, bearing on the issues of this case; and probably one-half of the allegations contained in this bill would be stricken out as irrelevant and the proof offered on them would be stricken out as irrelevant. So therefore I say that there will be no difficulty whatsoever in arriving at an [fol. 104] agreement upon the facts, sufficient to sustain and justify a proper injunction in this case. Now, Mr. Frazer said that it was a proposition of peace. Well, now,

it is a proposition of peace, but it is not a proposition of surrender. It is a suggestion made which will appeal to the convenience of all of us, and which would also save the time of the court and the time of counsel is dealing with this case, because this case will go on for a long time; and if I was guilty of withholding my motion or rather my suggestion to the court until this morning, it was simply because I had not decided until yesterday afternoon to present it, and then not with the fullest confidence. That is my reason for offering it at this time; and I believe it is a motion, the granting of which by the court will inure to the benefit not only of the defendants, but equally to the benefit of the complainants.

The Court: Can you submit the injunction in as broad terms as you feel will adequately protect you in an hour on the undisputed points?

Mr. Frazer: I can submit an injunction which on those points I think would be satisfactory, and which would be all I would expect from the court unproved. I would, however, rather hesitate to consent to an injunction of that character if it means I am to be limited in my proof.

The Court: You are the person who is asking for the injunction, Dean Frazer.

Mr. Frazer: Yes, sir, but I am asking for further injunction, and this whole thing, our picture of it is that it is conspiratorial and that every function here complained of is allied to another function, so that if we agree on the six points, whatever they are, that Mr. Hamill so generously suggests, we would have to have some concession on the other and get to a complete adjustment.

Mr. Hamill: All right.

Mr. Frazer: That is one thing, but I will not consent to an injunction without offering evidence, unless it be in [fol. 105] accordance with my terms, and also unless such portions of the evidence relating to those matters as I deem essential to prove the rest as being relevant, and as tending to show the conspiracy which we allege, may be admitted, notwithstanding any injunction which may be drawn.

The Court: Suppose you take an hour and present the injunction.

Mr. Frazer: We rise to what time?

The Court: 12:30. I will be here all day, Dean Frazer.

Mr. Hamill: I was going to make this suggestion if it

meets with the approval of counsel that we draw such injunction as we think should be made, Mr. Frazer draws such injunction as he thinks should be made, and then if we cannot agree on the injunction from a consideration of the copies made by each that we submit both copies to the court, and then the court either accept both of them and take something from each or else reject both of them and draw its own injunction.

Mr. Frazer: I don't understand that the court is here settling the final decree; I understand that I have a right to present my case and if the injunction which I wish is denied by the court, I shall insist on going on with my case. This is not a final decree being settled; I am perfectly willing to draw an injunction and submit it to Mr. Hamill and he may take it or leave it. That is my view of it and I think I have that right.

The Court: All right, we will adjourn until 12:30.

Recess.

Proceedings Resumed at 2 P. M.

The Clerk: All right, counsel.

Mr. Hamill: Your honor please, your honor about two hours ago sent counsel out to draft an injunctive order on [fol. 106] which both sides could agree; and so we agreed that counsel for the plaintiffs should prepare an injunctive order and then give it to us for our consideration and for such amendment or corrections or variations of its terms as we should think proper. About ten minutes after one, between five and ten minutes after one they handed us this injunctive order.

The Court: May I see the copy? I haven't got one. Now, could you give me just a chance to read it, Mr. Hamill? Don't remain standing. Now, I have read it; would it be agreeable to counsel if I discussed it with them privately?

Mr. Hamill: Your honor, we submit ourselves to your honor wholly; I merely want to make this observation, that this injunctive order,—and I shall close in a sentence,—I think this is important——

The Court: That's all right. It is not a question of time.

Mr. Hamill: It asks for more than they would get if every allegation of their bill were sustained or if the bill were

taken as confessed. I want to call attention to just one feature——

The Court: Just a minute, Mr. Hamill; is it the part of wisdom to discuss something that is not in final form?

Mr. Hamill: Whatever your honor thinks.

Mr. Frazer: I would like to say, I think Mr. Hamill is under a misapprehension as to what this paper is. He says a consent decree; I was to draw it, and he was to make such modifications as he wished; I don't understand that is the position at all. This is what I am offering, what I am capable, I believe, of proving by my evidence and if I don't get what I think I am capable of proving, I shall not offer the consent decree.

Mr. Hamill: May I ask you a question, Mr. Frazer: take for instance your paragraph where you claim the right—— [fol. 107] The Court: Now you are just going to do what I don't want you to do.

Mr. Hamill: Well, I don't want to do what the court doesn't want me to do, if the court please, but it was such a very palpable thing that I wanted to ask counsel to answer it.

The Court: Mr. Hamill, won't you and one of your associates and Mr. Frazer and Mr. Ernst come into my office. I only say one so that we don't get too many people talking.

(The Court and counsel repaired to the Judge's Chambers.)

Proceedings Resumed in Open Court

STATEMENT BY THE COURT

The Court: Counsel for the respective parties have drafted a tentative decree covering all points in dispute with the exception of the controversy arising out of the denial of permits to hold meetings. This tentative decree will be presented to both parties, and if agreed to will be signed by the court some time tomorrow. If it is not agreed to the whole case, and in any event the point reserved, will go to trial next Wednesday morning at ten thirty. All witnesses heretofore subpoenaed will return at that time without further subpoena.

[fol. 108] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1938

No. 6939

[Title omitted]

MINUTE ENTRY OF HEARING

And afterwards, to wit, the 23d day of December, 1938, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable J. Warren Davis, Honorable John Biggs, Jr. and Honorable Albert B. Maris, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

[fol. 109] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1938

No. 6939

FRANK HAGUE, Individually and as Mayor of Jersey City; Daniel J. Casey, Individually and as Director of Public Safety of Jersey City; Harry Walsh, Individually and as Chief of Police of Jersey City, and the Board of Commissioners of Jersey City, Defendants-Appellants,

v.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney, Daniel J. Foley and American Civil Liberties Union, Plaintiffs-Appellees

Appeal from the District Court of the United States for the District of New Jersey

OPINION—Filed January 26, 1939

Before Davis, Biggs and Maris, Circuit Judges

BIGGS, Circuit Judge:

The question presented by the appeal at bar is whether or not certain fundamental civil liberties safeguarded by

[fol. 110] the Constitution of the United States shall be observed and protected in Jersey City or shall there stand abridged.

The appellants, the defendants below, are the Mayor of Jersey City, the Director of Public Safety, the Chief of Police, and the Board of Commissioners of Jersey City. The appellees, the plaintiffs below, are the Committee for Industrial Organization, labor organizations affiliated with the CIO, individual representatives of such organizations, and the American Civil Liberties Union, a membership corporation.

The Nature of the Proceedings

The bill of complaint alleges that the appellants have denied the appellees the right to hold lawful meetings within the territorial limits of Jersey City allegedly upon the authority of an ordinance adopted April 15, 1930. It is further alleged that this denial was pursuant to a plan and conspiracy entered into by the appellants as public authorities of Jersey City to forbid all meetings organized by the appellees for the purposes of carrying on and discussing the work of the CIO and that to effect such ends the appellants exercised unlawful restraints upon the appellees and persons acting in sympathy with them. It is also alleged that the appellants denied the appellees and those acting in sympathy with them the right to disseminate information concerning the CIO by handbills or circulars and that this denial allegedly was pursuant to the authority of another ordinance of Jersey City passed upon January 22, 1924. It is also alleged that the appellants refused to permit picketing, excluded and deported agents of the appellees and persons acting in sympathy with them from the territorial limits of Jersey City, conducted searches and seizures without warrant or probable cause and generally harassed and molested the appellees and their agents in disregard of their constitutional rights. The bill of complaint prayed for injunctive relief. The appellants filed an answer in substance denying the charges made by the appellees, and [fol. 111] setting up as a defense that the appellees, their sympathizers and agents invaded Jersey City to cause and create confusion and riot and to intimidate the police. At the trial, which consumed many days, voluminous testimony was taken which we will briefly summarize.

The Evidence

It appears that in November, 1937, the appellee, William J. Carney, regional director of the CIO in New Jersey, prepared to inaugurate a drive for CIO membership in Jersey City. Learning of this fact, upon November 23, 1937, the Newark Evening News published an article headed, "CIO Prepared for Invasion—Mass Drive by 3,000 to be Launched Monday in Jersey City." The article went on to set forth certain statements alleged to have been made by Carney to the effect that there would now be a "show down" between the CIO and Mayor Hague. Carney was also reported to have said, "We will go to Jersey City to organize in a peaceful manner. Whether this will be possible in the face of denials of civil rights in that city I am unable to say at this time." Articles of similar tenor appeared about this time in other newspapers in and about Jersey City.

The record also shows that about six o'clock upon the morning of November 29, 1937, a number of persons, CIO members or sympathizers, gathered or attempted to gather at the CIO headquarters at No. 76 Montgomery Street, Jersey City. We use the phrase attempted to gather because the police were present about the headquarters in force, engaged in searching individuals and confiscating circulars and handbills relating to CIO union activities. A substantial number of these individuals were deported from Jersey City by the police by placing them upon ferry boats bound for New York City or by conducting them in motor vehicles beyond the territorial limits of Jersey City. A small number of individuals were arrested and a few were tried before a city magistrate who sentenced each defendant to five days imprisonment for the offense of [fol. 112] illegally distributing the circulars referred to. There is evidence that the police held CIO sympathizers for a time within the CIO headquarters, searching individuals as they went out through the door into the street, and thereafter entered the premises and made further searches and some seizures of the offending handbills.

The evidence is not entirely clear as to how many persons came to Jersey City or were in Jersey City attempting to take part in CIO activities upon the morning of November twenty-ninth, but an examination of it indicates that the

total number of these persons did not exceed a hundred, and their activities did not constitute an invasion within any accepted meaning of that word. What they had planned to accomplish presented no serious threat to the peace and good order of Jersey City. Upon the other hand the police of Jersey City sought to disorganize the forces of the CIO rather than to proceed in a manner calculated to preserve the civil rights of individuals. As we have stated, there were but few arrests and fewer trials. The conduct of the police upon this occasion was in gross violation of the civil rights of the persons concerned.

Within a comparatively short time thereafter the appellee, American Civil Liberties Union, attempted to secure a permit from the Director of Public Safety of Jersey City to hold an open air meeting in the City of Jersey City for the purpose of addressing the public upon the subject of civil liberties. The speakers were to be three members of Congress and a member of the bar of New York. At about this time also the CIO made an application for a permit for an outdoor meeting for the purpose of petitioning the Board of Commissioners of Jersey City to modify the ordinance prohibiting the distribution of circulars and to take action in respect to the alleged intimidation of owners of halls by certain officers of Jersey City. Certain persons were named as the speakers, including a member of Congress, CIO organizers, Roger N. Baldwin, and others. Permits to hold these meetings were refused by the Director [fol. 113] of Public Safety of Jersey City upon the ground that the meetings would lead to riots and disorder. A permit to speak was also refused to Norman Thomas, a former socialist candidate for President of the United States. A permit for a meeting was also refused to the American Whig Cliosophic Society of Princeton University, which desired to hold a public meeting in Jersey City at which Senator William E. Borah was to be the speaker. This permit was also denied upon the ground "that the said meeting would tend to create disturbance and disorderly assemblage." William M. Callahan, managing editor of "The Catholic Worker" was not granted a permit for a meeting though he stated that its purpose was to explain the Papal Encyclicals.

Protests in respect to the holding of CIO meetings were made to the Mayor and to the Department of Public Safety

by organizations in and about Jersey City. These included protests of the Jersey City Chamber of Commerce, the Association of the Sons of Poland, the Catholic War Veterans, the Jersey City Lions Club, the Jersey City Real Estate Board, the Ladies of the Grand Army of the Republic and the Italian War Veterans. There is evidence that Mayor Hague and his associates inspired at least some of these protests. The evidence is uncontrovertible that he was the spearhead of the movement to keep the appellee labor groups out of Jersey City. For example, a very large mass meeting of veterans' organizations was held at the Jersey City Armory and was addressed by Mayor Hague and other persons. The record indicates that the calling together of these organizations was done upon the instructions of Mayor Hague and that he himself actively collaborated in procuring the record attendance at the armory. At least one threat of violence was voiced against the CIO and its sympathizers. Mayor Hague, however, in testifying in the court below, made plain his belief that this threat was simply one by an overzealous individual and there was no real danger of physical violence from the veterans' organizations. This mass meeting voiced its approval of the [fol. 114] stand of the appellants in respect to the CIO and its sympathizers and protested against CIO speakers being allowed to address meetings in Jersey City.

The protests are important in that they serve as the basis expressed by the appellants for their refusal to grant permits for public meetings to the CIO and its sympathizers. While permits were refused to these persons by the Director of Public Safety, other groups whose views were not at variance with the opinions of the majority of the inhabitants of Jersey City received permits freely or the requirement of a permit was waived. It should be noted also that throughout this period of protesting mass meetings, the conduct of the police in respect to the appellees was similar to their conduct upon November 29, 1937. CIO members and sympathizers were deported from Jersey City and searches of individuals continued to be made without warrant or probable cause.

The reason given by Mayor Hague and certain of the other appellants in their testimony for such acts upon the part of the police was the necessity of preserving peace and good order in Jersey City and obviating the possibility of riot, strife and injury to the speakers and the citizens of

Jersey City. It in no wise appears, however, from the record before us that the police of Jersey City would have been powerless to maintain order at any meeting proposed by the appellees.

Findings of Fact and Conclusions of the Trial Court

After the trial of the cause the learned trial judge filed an exhaustive and able opinion and made exact and clear findings of fact and conclusions of law. He thereupon entered a decree granting the appellees substantially the relief they sought.

Among the findings of fact so made by the trial court are findings to the effect that the CIO, Steel Workers Organizing Committee, United Electrical Radio and Machine Workers of America and United Rubber Workers of America were established and are maintained for the purpose [fol. 115] of organizing into labor unions unorganized workers and to cause such labor unions to function as collective bargaining agencies for the betterment of terms and conditions of employment; that the American Civil Liberties Union was established and is maintained for the purpose of taking measures deemed by it to be essential for the enforcement of the rights secured by the First and Fourteenth Amendments to the Constitution of the United States. The court also found that the purposes of these appellees "are in the letter and spirit of our Constitution and laws and of the theory of our democratic institutions." The trial court also found that there was no competent proof that these appellees entertained other purposes or that the appellees or any of them "incited or advocated the overthrow of the government of the United States or the State of New Jersey by force or violence or incited or advocated the commission of any other acts in violation of the laws of the United States or the State of New Jersey."

Specifically in relation to the acts alleged by the appellees to have been committed by the appellants, the learned trial judge found that the appellants acting in their official capacities had adopted and enforced a deliberate policy of excluding and removing from the territorial limits of Jersey City the agents of the CIO and of the American Civil Liberties Union and persons acting in sympathy with them, had exercised unlawful personal restraints over these individuals and had interfered with their right of free locomotion on and free access to the public streets and parks

of Jersey City. The trial court also found that such exclusions and removals, personal restraints and interferences were frequently carried out by members of the police force of Jersey City upon their own fiat and without authority of law and without bringing the persons excluded, removed or restrained before any judicial officers in order to afford such individuals the benefits of judicial hearings.

Further findings of fact state that the appellants prevented the appellees or their agents from distributing cir- [fol. 116] culars and leaflets, from carrying placards or signs or otherwise publicizing the work of the CIO.

Particularly in respect to public meetings, the trial court found that the appellants officially adopted and enforced the deliberate policy of forbidding the appellees from communicating their views to the citizens of Jersey City by public gatherings or assemblies though there was competent proof that the appellants had granted permits to various persons, not associated with the appellees, to speak at meetings in the public streets of that city. The trial judge also found that there was no competent proof that the parks of Jersey City had been dedicated to any other purpose than the general recreation of the public. The trial court also found that there was no competent proof that the persons who were to speak at the meetings proposed by the appellees were such that any of them "either in their choice of words or in the manner of uttering the words chosen" would violate canons of decent discussion or speak such words that breaches of the peace would ensue. The trial judge found also that the appellants had caused permits to be refused for the holding of outdoor meetings of citizens to be addressed by the divers persons, sympathizers of the appellees, named in the findings of fact.

As a matter of law the trial court held that the appellants' deliberate official policy and acts were in violation of the rights of the appellees under the Fourteenth Amendment and the Commerce Clause of the Constitution of the United States.[1] These are the substantive questions of law presented by this appeal. A question of jurisdiction is also raised and will be considered later in this opinion.

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[1] The findings of fact, conclusions of law and decree of the trial court are set out in haec verba in an appendix to this opinion along with the two ordinances of Jersey City referred to.

[fol. 117] The Questions of Law

As to Liberty of the Person

As to Exclusion and Removal of Individuals from Jersey City

Individuals coming into or going about a city upon their lawful concerns must be allowed free locomotion upon the streets and public places.

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides, inter alia, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; * * *." There is no doubt that the right of an individual to pass with freedom of movement and without molestation between the States of the Union is one of the privileges of federal citizens which is protected by this clause. As was stated in Williams v. Fears, 179 U. S. 270, 274, "Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any state is a right secured by the Fourteenth Amendment and by other provisions of the Constitution." See Crandall v. Nevada, 6 Wall. 36; Colgate v. Harvey, 296 U. S. 404; United States v. Miller, 17 F. Supp. 65, 67; Marcus Brown Holding Co. v. Pollak, 272 F. 137, 141; In re Ah Fong, 1 F. Cas. 213, 217; Twining v. New Jersey, 211 U. S. 78, 97.

The record before us shows numerous instances where CIO sympathizers were removed from Jersey City by police officers acting with the approval of the appellants. The findings of fact of the trial court in this regard are fully supported by the evidence and injunctive relief was properly granted.

As to Unlawful Searches and Seizures

The Fourth Amendment to the Constitution of the United States provides, "The right of the people to be secure in [fol. 118] their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, * * *". The right so protected is a fundamental civil right and in our opinion is a privilege of Federal citizen-

ship. As such it is secured against abridgment by the states by the privileges or immunities clause of the Fourteenth Amendment as well as by the due process clause of that Amendment. We shall consider this question further when dealing with the jurisdiction of the court below.

Constitutional provisions granting freedom from unlawful searches and seizures are "of the very essence of constitutional liberty." Gouled v. United States, 255 U. S. 298, 304; Go-Bart Importing Co. v. United States, 282 U. S. 344, 357. Searches and seizures are unreasonable if they are carried out without probable cause. Carroll v. United States, 267 U. S. 132; United States v. O'Connell, 43 F. (2d) 1005. As was so succinctly stated by Judge Woods of the Circuit Court of Appeals for the Fourth Circuit in Elrod v. Moss, 278 F. 123, 130, "* * * to justify search and seizure * * * without warrant, the officer must have direct personal knowledge, through his hearing, sight, or other sense, of the commission of the crime by the accused."

In the case at bar the searches and seizures were made without probable cause, without personal knowledge upon the part of the searching officer and in fact without any crime or crimes having been committed.

It is apparent therefore that the injunctive relief from unreasonable searches and seizures given to the appellees by the court below was granted providently.

As to Interferences in General

An examination of the record leads us to the conclusion that the police of Jersey City pursued a course of conduct towards the appellees which possessed no sanction whatsoever in statute or ordinance. The appellees contend that, "If the police policy were in terms embodied in a criminal [fol. 119] statute * * *" such a statute would be unconstitutional. They cite the language of Mr. Justice Brandeis in Senn v. Tile Layers Protective Union, 301 U. S. 468, 478, stating, "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution." It is demonstrated by the record in the case at bar that though there is no ordinance of Jersey City which deals specifically with the right of picketing in labor disputes, none the less the practical effect

of the actions of the police in the case at bar was to prohibit picketing except upon terms and conditions imposed by the individual members of the police force.

It follows that when members of a police force remove individuals from a picket line, deport them from the territorial limits of a city or detain them in police custody under guise of arrest and release them without charges and without trial, the police are acting in defiance of due process of law as guaranteed by the Fourteenth Amendment. When, as in the case at bar, such conduct receives the consent and approbation of those charged with the conduct of city government, justice is destroyed. Such a condition is abhorrent in a democratic community.

An individual has a right to trial by properly constituted judicial authority upon a defined standard of criminal responsibility set forth by statute or ordinance. He must have the opportunity to be heard and to call witnesses in his own defense. This is the very essence of due process of law as prescribed by the Fourteenth Amendment. Powell v. Alabama, 287 U. S. 45, 68; Snyder v. Massachusetts, 291 U. S. 97, 122; United States v. Ballard, 12 F. Supp. 321, 325.

The findings of the trial court in respect to the issues under this heading are fully supported by the evidence and injunctive relief was properly granted.

[fol. 120] As to Liberty of the Mind

Interference with the Distribution of Handbills and the Carrying of Signs

An ordinance of Jersey City passed by its Board of Commissioners upon January 22, 1924, provides in part that "No person shall distribute or cause to be distributed or strewn about any street or public place any newspapers, paper, periodical, book, magazine, circular, card or pamphlet," and prescribes severe penalties for its breach. There are no licensing provisions in the ordinance and the prohibition it contains is absolute.

Such an ordinance is invalid upon its face in that it violates freedom of speech and of the press, fundamental civil rights protected by the Fourteenth Amendment from any abridgment by State action. It is squarely within the decision of the Supreme Court of the United States in Lovell v. City of Griffin, 303 U. S. 444.

Indeed, we do not understand that the appellants themselves today contend to the contrary. As we apprehend their position, it is to the effect that there was no need to lay the burden of an injunction upon them since they themselves are prepared to respect and honor the ruling of the Supreme Court. The record shows clearly, however, that for some time after the handing down of the decision in Lovell v. City of Griffin, the police of Jersey City continued their practice of refusing to permit the distribution of handbills by the sympathizers of the appellees upon the streets and in the public places of Jersey City.

The posting of placards and signs in public places is part of the freedom of the press. In our opinion such is clearly within the principle of Lovell v. City of Griffin.

The findings of the trial court as to the violation of these fundamental civil rights by the appellants are fully supported by the evidence and the injunctive relief granted is affirmed.

[fol. 121] As to the Right of Free Assembly, the Holding of Meetings upon the Streets or in the Public Parks of Jersey City

An ordinance of Jersey City adopted April 15, 1930 by the Board of Commissioners provides that "* * * no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety." The ordinance also states that the Director of Public Safety is authorized to grant permits for parades and public assembly "* * * upon application made to him at least three days prior to the proposed parade or public assembly." The ordinance provides further that the Director of Public Safety is authorized to refuse a permit "* * * when, after investigation of all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage." Substantial penalties are provided for the violation of the ordinance.

It is the contention of the appellants that permits for the holding of public meetings in Jersey City were properly refused to the appellees because such meetings would have resulted in riots and disorderly assembly.

We are of the opinion that the ordinance is unconstitutional in view of the fact that it permits the imposition of previous restraint upon the right of the individual to speak before an assembly of his fellows in a public place. The ordinance therefore prohibits peaceable assembly except upon terms repugnant to free speech. Freedom of speech and of the press are fundamental civil rights which are safeguarded to the individual by the due process clause of the Fourteenth Amendment.

As was stated by Mr. Chief Justice Hughes, delivering the opinion of the Supreme Court in De Jonge v. Oregon, 299 U. S. 353, "These rights may be abused by using speech or press or assembly in order to incite to violence and crime. [fol. 122] The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed."

The refusal of the courts to allow previous restraint to be imposed upon the freedom of the press is well exemplified by the decision of the Supreme Court of the United States in Near v. Minnesota, 283 U. S. 697. In the cited case a statute of Minnesota (Chapter 285 of the Session Laws of Minnesota for the year 1925. See Mason's Minnesota Statutes, 1927, 10123-1 to 10123-3) provided for the abatement, as a public nuisance, of "* * * a malicious, scandalous and defamatory newspaper" and authorized suits in the name of the State to abate such periodicals and to enjoin publishers from further violations. Such a suit was brought against "The Saturday Press" published in Minneapolis. From the opinion of the Supreme Court it appears that the articles contained in The Saturday Press were inflammatory and had led to actual violence. By its decision the Supreme Court of the United States reversed a decree of the Supreme Court of Minnesota sustaining an injunction abating the publication of the periodical. Mr. Chief Justice Hughes, delivering the opinion of the Court, stated: "It is no longer open to doubt that the liberty of the press, and of speech is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action. It was found impossible to conclude that this essential personal liberty of the citizen was left unprotected by the general guaranty of fundamental rights of person and property."

The Chief Justice went on to state, "If we cut through mere details of procedure, the operation and effect of the (Minnesota) statute in substance is that public authorities may bring the owner or publisher of a newspaper or periodical before a judge upon a charge of conducting a business of publishing scandalous and defamatory matter. * * * This is of the essence of censorship.

[fol. 123] "The question is whether a statute authorizing such proceedings in restraint of publication is consistent with the conception of the liberty of the press as historically conceived and guaranteed. In determining the extent of the constitutional protection, it has been generally, if not universally, considered that it is the chief purpose of the guaranty to prevent previous restraints upon publication * * *".

The Chief Justice also stated, "Equally unavailing is the insistence that the statute is designed to prevent the circulation of scandal which tends to disturb the public peace and to provoke assaults and the commission of crime. Charges of reprehensible conduct, and in particular of official malfeasance, unquestionably create a public scandal, but the theory of the constitutional guaranty is that even a more serious public evil would be caused by authority to prevent publication. 'To prohibit the intent to excite those unfavorable sentiments against those who administer the Government, is equivalent to a prohibition of the actual excitement of them; and to prohibit the actual excitement of them is equivalent to a prohibition of discussions having that tendency and effect; which, again, is equivalent to a protection of those who administer the Government, if they should at any time deserve the contempt or hatred of the people, against being exposed to it by free animadversions on their characters and conduct.' There is nothing new in the fact that charges of reprehensible conduct may create resentment and the disposition to resort to violent means of redress, but this well-understood tendency did not alter the determination to protect the press against censorship and restraint upon publication. As was said in New Yorker Staats-Zeitung v. Nolan, 89 N. J. Eq. 387, 388; 105 Atl. 72: 'If the township may prevent the circulation of a newspaper for no reason other than that some of its inhabitants may violently disagree with it, and resent its circulation by resorting to physical violence, there is no limit to what may be prohibited.' The danger of violent reactions becomes greater with effec-

tive organization of defiant groups resenting exposure, and if this consideration warranted legislative interference with [fol. 124] the initial freedom of publication, the constitutional protection would be reduced to a mere form of words."

In Grosjean v. American Press Co., 297 U. S. 233, the Supreme Court held that the predominant purpose of the grant of immunity there invoked by the appellees, viz., the immunity granted by the Fourteenth Amendment, was "* * * to preserve an untrammeled press as a vital source of public information." The Supreme Court thereupon proceeded to affirm the decree of the court below declaring unconstitutional a so-called licensing tax sought to be imposed upon the appellees by the State of Louisiana (La. Act No. 23, July 12, 1934). See also Dearborn Publishing Co. v. Fitzgerald, 271 F. 479.

There is strong analogy between the right freely to publish the written or printed word and the right here in issue freely to speak in a public assembly. It may be argued that inflammatory words spoken before an audience may lead more quickly to violence than the printed word dispersed throughout a city. The question, however, is one of degree. Free speech and free assembly are commonplaces of democratic governments. They are unheard of under totalitarian regimes. In New York and in London, cities possessing populations as diverse as Jersey City, free speech and free assembly are allowed as a matter of course and speakers may there call even for the destruction of existing laws and governments and be received with tolerance or amusement.

The rights of free speech and free assembly are essential parts of our American heritage. If the words used by a speaker are slanderous, the injured person may sue for damages in a court at law. If the speaker incites to riot or crime, the police may arrest him forthwith and the criminal processes of a democracy are available to punish him. In his concurring opinion in Whitney v. California, 274 U. S. 357, in which the question before the court was one of punishment of the defendant, she having spoken in defiance of [fol. 125] the Criminal Syndicalism Act of California (Statute 1919, c. 188, p. 281) Mr. Justice Brandeis stated at page 378, "The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious in-

jury to the state. Among free men the deterrents ordinarily to be applied to prevent crime are education and punishment for violence of the law, not abridgment of the right of free speech and assembly." We can perceive no valid reason why the situation should be otherwise in Jersey City. Speakers may not be prohibited from speaking because they may say something which will lead to disorder. The function of the police at public meetings is not to prevent speakers from presenting their views but to preserve order while they speak. Otherwise, freedom of speech and assembly is destroyed.

The interpretation of the rights of free speech and free assembly contended for by the appellants is shocking and places these rights in the hands of those who would destroy them. If the ill-intentioned threaten riot, speech may not be had. Under what conditions then would not the cry of riot be raised? Applying the appellants' doctrine literally, political speakers might not stump a city in an election if their opponents objected to what they had to say and threatened disorder. The strict application of such a rule would result eventually in the existence of but one political party as is now the case under totalitarian governments.

The rule contended for by the appellants is scarcely one which commends itself to practical democratic government. Nor do we think that the appellants have followed such a rule. The record shows that the appellees and their sympathizers were not permitted to speak because they were deemed to be undesirables by the city authorities. The cries of impending riot raised by the appellants are not candid. In other words, Mayor Hague and his associates, reversing the usual procedure, troubled the waters in order to fish in them.

[fol. 126] There are of course both proper and improper times and places for holding public meetings. It is difficult to conceive a time when a public meeting might properly be held at Broad and Chestnut Streets in Philadelphia or at Broadway and Forty-Second Street in New York City. If public meetings are to be held upon the streets of a city, they must be held at such places or such times as will permit them not to interfere unreasonably with the traffic and all that it implies. Such a rule, however, should not be too narrow a one, for if a public meeting is held, it is to be assumed that volume of traffic will be increased. If mass

meetings are to be held in public parks, they must be held at such times and in such localities that they will not unduly interfere with the public recreation to which parks are dedicated. A statute or ordinance embodying these principles of regulation would in our opinion be constitutional.

Much emphasis is placed by the appellants upon the decision of the Supreme Court in Davis v. Massachusetts, 167 U. S. 43, upon appeal from a decision of the Supreme Judicial Court of Massachusetts, reported in 162 Mass. 510, 39 N. E. 113. In the cited case an ordinance of Boston forbade speaking on the Common without a permit from the city authorities. Davis desired to use the Common for religious services. He proceeded to speak without asking for a permit and was arrested and convicted. Upon the appeals that conviction was sustained.

The Davis case, however, may be distinguished upon its circumstances from that at bar. As we have stated, Davis never applied for a permit to the city authorities. In the case at bar, the appellees sought permits in accordance with the terms of the Jersey City ordinance and permits were denied to them. Upon the question of the constitutionality of the ordinance now under discussion, however, it is in point and we cannot state otherwise. In our opinion, however, the rule laid down in the Davis case has been modified by the later decisions of the Supreme Court in Gitlow v. New [fol. 127] York, 268 U. S. 652; Fiske v. Kansas, 274 U. S. 380; De Jonge v. Oregon, supra; Near v. Minnesota, supra, and Lovell v. City of Griffin, supra. In these later cases the Supreme Court declared the modern doctrine of protection of liberty of speech and assembly against state and municipal restrictions and made plain by judicial interpretation that the freedom of press and speech expressly protected by the First Amendment of the Constitution against Federal interference was also protected by the Fourteenth Amendment against interference by the States. Moreover, in the Davis case there is but small discussion of civil liberties. The Supreme Court took the position that "* * * for the legislature * * * to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house." This view of the powers of city authorities in respect to a public park, viz., likening them to the powers of an individual over his own dwelling, does not seem consonant with the expressions of

the Supreme Court upon germane subjects in a later period. On the contrary we think it cannot now be doubted that a city owns and its officials administer its streets and parks, not as private proprietors, but as trustees for the people. While streets and parks are to be administered primarily for the use of the people for travel and recreation it is equally certain that, consistent with such uses, the public places of a city must be open for the use of the people, in order that they may exercise their rights of free speech and assembly. If this were not so it is obvious that these rights would be but empty forms for those unable to obtain suitable private places in which to exercise them.

The Ordinance Has Been Administered in an Unconstitutional Manner

But even if we were to assume that the ordinance of Jersey City under consideration is valid and constitutional, none the less we find that it has been administered in a discriminatory and therefore unconstitutional manner. [fol. 128] The learned trial judge in three of his findings of fact treats the past performances of the speakers designated by the appellees, whether they have spoken with decency and without causing disorder, as constituting the test, or at least the most important single factor of the test, as to whether they will cause disorder if permitted to speak. He then found as a fact that none of the speakers designated by the appellees had ever spoken at any public meetings in the open air at the places designated in the applications for permits and that none of the designated speakers in past performances had ever given reasonable grounds for belief that breaches of the peace would result from their utterances. The test so applied by the trial judge seems to us to be a proper one if it be conceded that previous restraint may be imposed. We can conceive of no other unless the speeches sought to be given are subjected to prior censorship by the authorities, a course completely incompatible with the right of free speech and assembly. The findings of fact referred to are fully supported by the evidence.

We can find no competent evidence from the record before us that violence or disorder would have resulted either from the meetings which the appellees desired to hold or from the words which the speakers were likely to deliver at such meetings. Nor was there any reasonable apprehension that the public in Jersey City would have rioted. The record,

however, presents an extraordinary fact. The Mayor of Jersey City and the other appellants endeavored to build up a dangerous situation, one in which sympathizers of the appellees could not safely speak. That such efforts did not result in actual danger seems to us to have resulted rather from the good sense of the citizens than from the good will of Mayor Hague and his associates. As we have stated, while denying permits to the appellees and their sympathizers, the appellants granted permits for meetings to other groups. Discrimination is therefore plainly shown.

Such conduct upon the part of the appellants is in violation of the due process and equal protection clauses of the [fol. 129] Fourteenth Amendment. The criterion imposed by the authorities of Jersey City upon the right to speak therein is simply whether or not the individual who is to speak is a right thinking person in the view of those who constitute the city authorities. No other test is applied. The authorities upon this subject are very clear. In Sunday Lake Iron Co. v. Township of Wakefield, 247 U. S. 350, 352, Mr. Justice McReynolds, delivering the opinion of the Supreme Court stated, "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."

In Concordia Fire Insurance Co. v. Illinois, 292 U. S. 535, 545, Mr. Justice Van Devanter stated, "Whether a state statute is valid or invalid under the equal protection clause of the Fourteenth Amendment often depends on how the statute is construed and applied. It may be valid when given a particular application, and invalid when given another." See also Yick Wo v. Hopkins, 118 U. S. 356, and People ex rel. Doyle v. Atwell, 232 N. Y. 96, 102, 103, 133 N. E. 364, wherein Cardozo, J., stated, "The Mayor refused a permit, it is said, because the applicants were Socialists. If that is so, he was guilty of a grave abuse of power."

The appellants contend that the ordinance does not concern itself with speech at all and does not attempt to regulate what may or may not be said at public meetings; that it was designed merely to regulate the manner in which the streets and public places of the city might be used. The appellants argue this is a valid exercise of the police power

and does not infringe or abridge any of the constitutional rights of the appellees. This is really the contention that the ordinance is valid and constitutional upon its face, a contention which we have dealt with in an earlier part of this opinion. It is obvious that whether the ordinance be valid upon its face or otherwise, none the less it has been [fol. 130] used by the authorities of Jersey City for abridging the rights of free speech and free assembly.

The findings of fact made by the trial judge upon this phase of the case are supported fully by the evidence and the injunctive relief sought by the appellees was properly granted to them.

As to the Defense of Unclean Hands Advanced by the Appellants

The appellants urge that the appellees are not entitled to the injunctive relief granted them because they come into court with unclean hands. This contention is controverted by the express finding of the trial court that there was no competent proof that the appellees had so conducted themselves as to forfeit the protection of a court of equity. Our conclusions are substantially similar to those of the trial judge. We think that an American community, devoted to American principles, cannot exist upon the terms offered by the appellants. Minorities, however unpopular, must be allowed to make their voices heard and the whipping up of public indignation and public clamor to the end that free expression of opinion and free assembly may not be had sits with little grace upon the officials of an American city. Fundamental civil liberties must not be tampered with if our system of democratic government is to survive.

We do not find the appellees guilty of having unclean hands.

As to the Enforcement of the Decree

The appellants contend that it is not feasible for the court below to enforce the provisions of the decree entered by it and that therefore it should not have been made. Giles v. Harris, 189 U. S. 475. More specifically, the appellants' contention is that it would require the court below to exercise supervisory powers over the administration of government in Jersey City and to interfere with the orderly exercise of governmental duties. The appellants also contend

[fol. 131] that the court below has in effect constituted itself an ordinance making body and has involved itself directly in the administration of the public business of Jersey City.

We consider these objections to the decree to be without merit and consider it unnecessary to treat them in detail. We state that in our opinion the decree is enforcible and does not substitute the will of the court for that of the governing authority of Jersey City. Moreover, the decree is carefully worded. The police are left free to pursue the duties placed upon them by law, and in so far as they act within the scope of the law their activities are in no wise interfered with or hindered. The authorities of Jersey City, by the terms of the decree carefully drawn by the court below, are free to carry out their duties in respect to preserving the safety of the lives and property of the inhabitants of Jersey City within the structure of existing law.

In our opinion, however, paragraph 4.(d) of the decree requires modification in that it enjoins the appellants from enforcing their deliberate policy of forbidding the appellees or their sympathizers to hold meetings upon the public streets or places of Jersey City other than parks, "unless and until" the appellants, acting in their official capacities, adopt and enforce a deliberate policy of forbidding meetings of any kind upon the streets or public places of Jersey City, other than parks. For the reasons heretofore stated it is our opinion that the clause of paragraph (d) beginning with the word "and" in the seventh line thereof and ending with the word "City."[2] in the twelfth line thereof should be stricken from the injunction, enlarging it as will appear.

[fol. 132] As to the Questions of Jurisdiction

Much of the argument of counsel and of the briefs of the parties has been devoted to the question of whether there was jurisdiction of the cause in the court below. In our opinion the issue of jurisdiction must be resolved in favor of the appellees, not only under the provisions of Section

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[2] The precise language is as follows:

"* * * and unless and until the defendants acting in their official capacities adopt and enforce the deliberate policy of forbidding meetings of any kind on any of the public streets, highways, thoroughfares or places of the City of Jersey City. * * *"

24(1) of the Judicial Code (28 U. S. C. A. 41(1)), but also under the provisions of subsection 14 of that section (28 U. S. C. A. 41(14)). We will deal first with the last mentioned but more vital section.

As to Jurisdiction Under Section 24(14) of the Judicial Code

The appellants contend that the fundamental civil rights here in issue were brought into the American Colonies from England and therefore antedated the adoption of the Federal Constitution. They also contend that these rights were not secured to citizens of the United States by the Constitution in the sense that they were created in the first instance by that instrument. It follows therefore, contend the appellants, that the court below did not have jurisdiction of the cause at bar under the provisions of Section 24(14) of the Judicial Code because that subsection relates only to rights "secured by the Constitution" in the sense the appellants have indicated, while the rights sub judice were not secured to the appellees by the Constitution in that sense.

The appellants refer to the right of freedom from unreasonable searches and seizures and state that it is elementary that this right granted by the Fourth Amendment is protected by that Amendment only against abridgment by the Federal government. The appellants point out that because the right to be free of unreasonable searches and seizures is set forth in the Bill of Rights, it is proven that this right existed in the states prior to the adoption of the Constitution.

[fol. 133] This is of course true and it is elementary that the Bill of Rights was designed as a curb upon the power of the Federal government which it was feared might encroach upon the rights of the states. We are unable to perceive any reason, however, why the right to be free from unreasonable searches and seizures set forth in the Fourth Amendment should not stand upon a parity today with freedom of religion, of speech, of the press and of assembly as guaranteed by the First Amendment. All of these rights are of equal importance to the individual and in our opinion they stand as pari materia.

Liberty of the person, including freedom of locomotion, is, as we have seen, one of " * * * the privileges or immunities of citizens of the United States * * *" pro-

tected by the Fourteenth Amendment against abridgment by the states. Among those rights and liberties of which the states may not deprive the individual under the due process clause of that Amendment are freedom of speech, Stromberg v. California, 283 U. S. 359, and freedom of the press, Gitlow v. New York, supra. In our opinion freedom from unreasonable searches and seizures is included as well.

These fundamental civil rights were secured to the individual against infringement by the Federal government by the First and Fourth Amendments. In a very real sense thus they became privileges of Federal citizenship. Consequently they are among the privileges of citizens of the United States as distinguished from those appertaining purely to state citizenship and are privileges which no state may abridge under the Fourteenth Amendment. Protected from abridgment by the Federal government by the First and Fourth Amendments, they are protected from abridgment by the states by the Fourteenth Amendment. See Colgate v. Harvey, supra, at page 428, wherein it was stated by Mr. Justice Sutherland, "* * * a State cannot under the Fourteenth Amendment, abridge the privileges of a citizen of the United States, albeit he is at the same time a resident of the State which undertakes to do so * * *". [fol. 134] See also the Slaughter House Cases, 16 Wall. 36, 79, in which Mr. Justice Miller described the right of peaceful assembly as a privilege of citizens of the United States. It follows therefore that the fundamental civil rights secured to citizens of the United States by the First and Fourth Amendments are secured in the sense of being protected or guaranteed against interference by State action by the Fourteenth Amendment.

To discuss now the specific statutes under which jurisdiction is invoked in the suit at bar, R. S. 1979 (8 U. S. C. A. 43) provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Section 24, subdivision fourteenth of the Judicial Code (28 U. S.

C. A. 41 (14)) gives the district courts of the United States original jurisdiction, without regard to the amount in controversy, "* * * of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom or usage, of any state, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States." These provisions were brought forward from Section 1 of the Act of April 20, 1871, c. 22, 17 Stat. 13, entitled "An Act to enforce the provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes." It is clear therefore that they refer to the civil rights secured by the Fourteenth Amendment, including those fundamental rights which are involved in this suit. See Holt v. Indiana Manufacturing Co., 176 U. S. 68.

[fol. 135] Since the statutory provisions set out above were enacted originally to enforce recognition by the states of the civil rights secured by the Fourteenth Amendment and in view of the fact that the civil rights to which the Fourteenth Amendment affords protection are secured by it only in the sense of being protected or guaranteed against invasion by the states, we think that it is entirely clear that Section 24(14) of the Judicial Code, uses the phrase "secured by the Constitution" in that sense which is its plain and ordinary meaning, viz., to put beyond hazard of losing.

In the case of Smith v. United States, 157 F. 721, decided in 1907, a contention similar to that of the appellants was made in respect to the interpretation of rights under the Thirteenth Amendment by the defendants with regard to the jurisdiction of a district court of the United States to try them upon an indictment which charged them with conspiracy to place negroes in a condition of involuntary servitude. Freedom from involuntary servitude is as important as, and bears a status precisely similar to, freedom of religion, of speech and of the press. The Circuit Court of Appeals for the Eighth Circuit demolished the argument. Judge Adams stated, pages 724, 725, "A complete answer to defendants' contention is afforded by the

fact that the statute[3] protects a right 'secured' by the Con-
[fol. 136] stitution and laws; not one originating in, created, or granted by them. * * *

"A right which has been conferred by law is manifestly secured by that law. Such concession, however, is no authority for the contention that a right secured by law must necessarily have been conferred by some law."

But if we were of the opinion that the words used in the statute "secured by the Constitution" mean created in the first instance by the Constitution we would still be compelled to hold that these rights were secured by the Constitution since, as we have seen, they were secured in that sense to the people of this country by the First and Fourth Amendments which conferred these rights upon citizens of the Federal government and protected them against infringement by that government.

Consequently it follows that upon either view, since the suit at bar was brought to secure the protection and enforcement of rights of which the appellees had been deprived by the appellants, it was authorized by R. S. 1979, quoted above, and the District Court had jurisdiction of the cause by virtue of the provisions of Section 24(14) of the Judicial Code.

As to Jurisdiction under Section 24(1) of the Judicial Code

We are of the opinion that the court below also had jurisdiction of the cause under the first subdivision of Section 24 of the Judicial Code (28 U. S. C. A. 41(1)) which provides that the District Courts of the United States shall

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[3] R. S. 5508 (18 U. S. C. A. 51), which is as follows:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

have original jurisdiction "* * * of all suits of a civil nature at common law or in equity, * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000, and (a) arises under the Constitution or laws of the United States * * *". It is obvious that the suit at bar arises under the Fourteenth Amendment and the only question which remains to be determined is the value of the matter in controversy.

[fol. 137] As we have seen, the suit involves the deprivation of civil rights. R. S. 1979 and 1980 give to the individuals thus deprived a right of action at law. Irrespective of these statutes, however, a right of action in the individual for damages for loss of political rights existed at common law. Nixon v. Herndon, 273 U. S. 536. Such an action sounds in tort and the jury may award exemplary or punitive damages. Barry v. Edmunds, 116 U. S. 550; Wiley v. Sinkler, 179 U. S. 58. In such an action the jurisdictional sum is to be determined by the amount claimed by the plaintiff in his complaint or declaration, Hulsecamp v. Teel, 2 Dallas 358, Wiley v. Sinkler, supra, including an amount claimed by way of punitive damages, Ragsdale v. Rudich, 233 F. 182, unless it appears from the complaint or declaration that it is not possible for the plaintiff to recover the amount claimed or that the amount is claimed fraudulently in order to create jurisdiction in the court. Smithers v. Smith, 204 U. S. 632. This rule applies as well to suits in equity. Maurel v. Smith, 220 F. 195.

In the suit at bar the amount in controversy is to be determined by the value of the civil rights of which the appellees were deprived in the past and which are threatened with loss in the future. The value is to be measured by the amount of damages which might be recovered by the appellees in an action at law. In the bill of complaint the appellees aver that the amount in controversy exceeds $3,000, exclusive of interest and costs. The court below found that the rights of the appellees and of each of them which had been abridged or destroyed by the appellants had a value to each appellee in excess of $3,000, exclusive of interest and costs. This was in effect a finding by the court that each of the appellees might have recovered such a sum in damages for each deprivation of a right. It was also the equivalent of a finding that the amount claimed by

the appellees to be in controversy was averred by them in good faith.

[fol. 138] In our opinion the court below would not have been justified in holding otherwise. Wiley v. Sinkler, supra. Its finding is precisely similar to that of a jury in an action for damages brought to redress the deprivation of civil rights and was not required to be based on specific evidence as to the value but rather upon the trial judge's own knowledge and opinion as to the value and as to the exemplary or punitive damages which might be reasonably awarded. Wayne v. Venable, 260 F. 64.

As to the Capacity of Certain of the Appellees to Maintain the Action at Bar

The appellants contend that because one of the appellees is a corporation and others are unincorporated associations they are not entitled to enjoy some of the civil rights which are the subject of the suit. All of the appellees referred to however are membership corporations or associations and it clearly appears that the suit was brought by them for the benefit of their members. In our opinion these appellees were proper parties and able to conduct the suit in representative capacities on behalf of the interests of their respective members. International News Service v. Associated Press, 248 U. S. 215.

As to the Contention That the Actions of the Appellants Did Not Constitute State Action

The appellants also contend that their actions complained of by the appellees did not constitute action by the State of New Jersey within the prohibition of the Fourteenth Amendment. The acts enjoined by the court below were of three types: (1) acts pursuant to the express mandate of city ordinances found to be void on their face; (2) acts carried on under color of city ordinances discriminatively and therefore unconstitutionally applied; and (3) acts not under the authority of any ordinance or statute but committed under color of municipal office and as part of a deliberate municipal policy.

[fol. 139] As to the first class, we entertain no doubt but that the appellants' acts constituted action by the state since an ordinance adopted by a city under authority of

state legislation[4] has been held to be an act of the state within the meaning of the Fourteenth Amendment. New Orleans Waterworks Co. v. Louisiana Sugar Refining Co., 125 U. S. 18. The actions of the appellants in the second category must be held likewise to be state actions. Fidelity and Deposit Co. v. Tafoya, 270 U. S. 426. Indeed, there is no doubt that the provisions of the Fourteenth Amendment guaranteeing equal protection of the law are violated if, as the court below found in the case at bar, municipal officers failed systematically to enforce an ordinance equally against all the members of the class affected by it. Cumberland Coal Co. v. Board of Revision, 284 U. S. 23. The third category of acts must also be held to be the acts of the State within the meaning of the Fourteenth Amendment. Ex parte Virginia, 100 U. S. 339; Home Telephone & Telegraph Co. v. Los Angeles, 227 U. S. 278. As Chief Justice White said of the Fourteenth Amendment in the case last cited, "It provides, therefore, for a case where one who is in possession of state power uses that power to the doing of the wrongs which the Amendment forbids, even although the consummation of the wrong may not be within the powers possessed, if the commission of the wrong itself is rendered possible or is efficiently aided by the state authority lodged in the wrongdoer. That is to say, the theory of the Amendment is that where an officer or other representative of a state, in the exercise of the authority with which he is clothed, misuses the power possessed to do a wrong forbidden by the Amendment, inquiry concerning whether the state has authorized the wrong is irrelevant, and the Federal judicial power is competent to afford redress for the wrong by dealing with the officer and the result of his exertion of power."

[fol. 140] As to the Adequacy of the Appellees' Remedy at Law

The appellants contend that the appellees have a full and adequate remedy at law and that therefore the causes of action set up in the bill of complaint are not cognizable in equity. In our opinion this contention cannot be sus-

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[4] See P. L. 1882 N. J., p. 47, as amended by P. L. 1901, N. J., p. 78.

tained. The record clearly shows a shocking constant disregard of the basic civil rights of the appellees by the appellants. These acts were torts and their threatened continuance is sufficient ground for the equitable relief sought and granted. Terrace v. Thompson, 263 U. S. 197, 214; Walla Walla v. Walla Walla Water Co., 172 U. S. 1, 11, 12; Osborne & Co. v. Missouri Pacific R. Co., 147 U. S. 248, 258.

The decree of the court below is modified as heretofore indicated in this opinion by striking from paragraph 4.(d) of the injunction the words of limitation heretofore specified and is in all other respects affirmed.

A true Copy. Teste:

——— ———, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

[fol. 141] APPENDIX TO OPINION

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE TRIAL COURT

Findings of Fact

A. Parties

1. Plaintiff Committee for Industrial Organization is a voluntary unincorporated committee having its principal office in the District of Columbia. Plaintiffs Steel Workers Organizing Committee, United Electrical Radio and Machine Workers of America, and United Rubber Workers of America, are voluntary unincorporated labor organizations affiliated with plaintiff Committee for Industrial Organization. Plaintiff William J. Carney is director for the State of New Jersey of plaintiff Committee for Industrial Organization, and plaintiffs William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney and Daniel J. Foley are field representatives of the Committee for Industrial Organization under the supervision of plaintiff William J. Carney.

2. Plaintiff American Civil Liberties Union is a membership corporation having its principal office in the City of New York.

3. Defendant Frank Hague is Mayor of the City of Jersey City, defendant Daniel J. Casey is Director of Public Safety of Jersey City, defendant Harry Walsh is Chief of Police of Jersey City, and defendant The Board of Commissioners of Jersey City is the governing board of Jersey City. Defendant Frank Hague, as mayor, has general supervisory powers over all city departments and by his admission and in fact the policies of these departments, including the policies of the department of public safety, are his policies.

[fol. 142] B. The Purposes of the Parties

1. Plaintiffs, the Committee for Industrial Organization, Steel Workers Organizing Committee, United Electrical Radio and Machine Workers of America, and United Rubber Workers of America, were established and are maintained for the purpose of bringing about the organization as labor unions of unorganized workers in various industries and with the further purpose of causing said labor unions to exercise the normal and legal functions of labor organizations such as collective bargaining with respect to the betterment of wages, hours of work and other terms and conditions of employment.

2. Plaintiff, American Civil Liberties Union, was established and is maintained for the purpose of taking such measures as it deems lawful and essential for the enforcement of the rights secured by the First Amendment and the Fourteenth Amendment of the Constitution of the United States. The First Amendment reads as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

3. Defendants, Frank Hague, Daniel J. Casey and Harry Walsh, were elected or appointed and are in office for the purpose of taking part in the administration of the government of the City of Jersey City.

4. The purposes of the plaintiffs above set forth are in the letter and spirit of our Constitution and laws and of the theory of our democratic institutions.

5. There is no competent proof that the plaintiffs or any of them had any other purposes and more particularly there is no competent proof that the plaintiffs or any of them incited or advocated the overthrow of the government of the United States or the State of New Jersey by force of [fol. 143] violence or incited or advocated the commission of any other acts in violation of the laws of the United States or the State of New Jersey.

C. Liberty of the Person

1. The defendants acting in their official capacities have adopted and enforced the deliberate policy (a) of excluding and removing from the limits of Jersey City various agents of the plaintiffs Committee for Industrial Organization and American Civil Liberties Union and various persons acting in sympathy or in concert with said plaintiffs, (b) of exercising personal restraint over various agents of the plaintiffs Committee for Industrial Organization and American Civil Liberties Union and various persons acting in sympathy or in concert with said plaintiffs and (c) of interfering with the right of locomotion on and the free access to public streets, highways, thoroughfares, parks and places of the City of Jersey City of various agents of the plaintiffs Committee for Industrial Organization and American Civil Liberties Union and various persons acting in sympathy or in concert with said plaintiffs.

8. This exclusion, removal, personal restraint and interference has been carried out by force and violence and without the consent of and contrary to the will of certain of the individual plaintiffs, various agents of the plaintiffs, Committee for Industrial Organization and American Civil Liberties Union and various persons acting in sympathy or in concert with them, although all of those persons were at the time of such exclusion, removal, personal restraint and interference acting in an orderly and peaceable manner.

3. This exclusion, removal, personal restraint and interference of persons by force and violence is carried out by members of the police force of Jersey City on their own administrative fiat without authority of law and without bringing the persons, excluded, removed, personally restrained and interfered with as speedily as is reasonably [fol. 144] possible before any judicial officer in order that

such persons may be afforded a judicial hearing or day in court.

D. Liberty of the Mind

Circulars, Leaflets and Handbills

1. The defendants, acting in their official capacities, have adopted and enforced the deliberate policy of preventing the plaintiffs and those acting in sympathy or in concert with them from distributing any circulars, leaflets or handbills and more particularly Plaintiffs' Exhibit No. 1 (handbill), No. 4 (leaflet), No. 7 (circular), and No. 32 (circular) in or about the streets, highways, thoroughfares or other public places of the City of Jersey City, and in so doing they have purported to rely on an ordinance of the City of Jersey City passed January 22, 1934.

2. This prevention is carried out by members of the police force of Jersey City by force and violence and without the consent of and contrary to the will of the plaintiffs and those acting in sympathy or in concert with them.

3. The circular, leaflets and handbills whose distribution was thus prevented were in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451) or in other respects objectionable.

4. The distribution of the circulars, leaflets and handbills thus prevented is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451).

5. There is competent proof that the defendants threatened to pursue the policy of preventing the distribution of circulars, leaflets and handbills by the plaintiffs and those acting in sympathy or in concert with them on the public streets, highways, thoroughfares and places of the City of Jersey City.

[fol. 145] Placards

1. The defendants, acting in their official capacities, have adopted and enforced the deliberate policy of preventing the plaintiffs and those acting in sympathy or in concert

with them from distributing placards in or about the streets, highways, thoroughfares or other public places of the City of Jersey City, and in so doing they have purported to rely on an ordinance of the City of Jersey City adopted February 19, 1935.

2. This prevention is carried out by members of the police force of Jersey City by force and violence and without the consent of and contrary to the will of the plaintiffs and those acting in sympathy or in concert with them.

3. The placards whose distribution was thus prevented were in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451) or in other respects objectionable.

4. The distribution of the placards thus prevented is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451).

5. There is competent proof that the defendants threatened to pursue the policy of preventing the distribution of placards by the plaintiffs and those acting in sympathy or in concert with them on the public streets, highways, thoroughfares and places of the City of Jersey City.

E. Public Meetings

1. The defendants in their official capacities have adopted and enforced the deliberate policy of forbidding the plaintiffs and persons acting in sympathy or in concert with them, from communicating their views to the citizens of Jersey City through the holding of meetings or assemblies in the open air and at public places.

[fol. 146] 2. On or about December 17, 1937, plaintiff American Civil Liberties Union duly applied under and pursuant to the ordinance of the City of Jersey City adopted April 16, 1930, for a permit to hold an outdoor assembly in a public place in the City of Jersey City, to be addressed by Congressman Maverick, Congressman O'Connell, Congressman Allen and Morris L. Ernst; and on or about December 23, 1937, plaintiff Committee for Industrial Organization similarly applied for a permit to hold an outdoor assembly to be addressed by Congressman O'Connell, Roger

N. Baldwin, William J. Carney, Al Barkin, Sam Macri and John Kiesler. Said applications were severally denied by defendant Daniel J. Casey upon consultation with and approval of the other defendants herein.

3. There is no competent proof that the parks of Jersey City or any of them are dedicated for purposes other than the general recreation of the public.

4. There is no competent proof that the proposed speakers or any of them at the meetings applied for by said plaintiffs referred to in Subdivision 2 of E hereof had ever spoken at any public meetings or assemblies in the open air and at public places previous to the applications for the permits above referred to.

5. A fortiori there is no competent proof that the proposed speakers or any of them at the meetings applied for by said plaintiffs referred to in Subdivision 2 of E hereof had ever spoken at any public meetings or assemblies in the open air and at public places previous to the applications of the permits above referred to at which said public meetings or assemblies any breach of the peace whatsoever had occurred.

6. A fortiori there is no competent proof that the proposed speakers or any of them at the meetings applied for by said plaintiffs referred to in Subdivision 2 of E hereof had ever spoken at any public meetings or assemblies in the [fol. 147] open air and at public places previous to the applications for the permits above referred to at which said speakers or any of them had either in their choice of words or in their manner of uttering the words chosen violated the reasonable canons of decent discussion or given reasonable apprehension to believe that breaches of the peace would result from the utterance of the said words.

7. There is competent proof through Plaintiffs' Exhibits Nos. 10 and 11 that the City of Jersey City has granted permits — various persons other than the plaintiffs proposing to speak at meetings in the public streets of the said city.

F. Jurisdictional Allegations

1. The rights of the plaintiffs and each of them, interfered with and frustrated by the defendants, above set forth,

have a value as to each plaintiff in the excess of the sum of $3000, exclusive of interest and costs.

2. The enforcement of the defendants' policies above set forth, as against the plaintiffs, herein, results in irreparable damage to them and the threat of continued enforcement of said policies against them involves a threat of manifold and repeated prosecutions for alleged offenses and manifold and repeated invasions of their rights.

3. There is no competent proof that the plaintiffs Committee for Industrial Organization and American Civil Liberties Union are such organizations or that the individual plaintiffs have so conducted themselves as to forfeit the protection of a court of equity.

Conclusions of Law

1. The Court has jurisdiction over this suit under Section 24 (1) of the Judicial Code (28 U. S. C. A., Section 41 (1)), and under Section 24 (14) of the Judicial Code (28 U. S. C. A., Section 41 (14)), and under Section 24 (12) and [fol. 148] (14) of the Judicial Code (28 U. S. C. A., Section 41 (12) and (14)).

2. The defendants' official policy and acts respecting exclusion, removal and personal restraint are in violation of Section 1, and the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the interstate commerce clause of Article 1, Section 8 of the Constitution of the United States.

3. The defendants' official policy and acts respecting interference, free access to, locomotion and communication of thoughts on the public streets, highways, thoroughfares, parks and places of the City of Jersey City are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

4. The defendants' official policy and acts respecting distribution of literature on the public streets, highways, thoroughfares, park- and places are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the ordinance of the City of Jersey City, passed January

22, 1924, under which the defendants have purported to act, is, with respect to such distribution of literature, held to be void, unconstitutional and of no force or effect.

5. The defendants' official policy and acts respecting placards are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the ordinance of the City of Jersey City adopted February 19, 1935, under which the defendants have purported to act, is held to be void, unconstitutional and of no force or effect.

6. The defendants' official policy and acts respecting public assemblies are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the ordinance of the City of Jersey City, adopted April 15, 1930, under [fol. 149] which the defendants have purported to act, is in its application void, unconstitutional and of no force or effect.

7. The plaintiffs herein have established and proved a cause of action under the Constitution of the United States, and under Section 43 of Title 8 of the United States Code, and under Section 47 (3) of Title 8 of the United States Code, reinforced by Section 51 of Title 18 of the United States Code.

8. The separate and distinct defense in point of law set forth in the defendants' answer herein, to the effect that certain of the defendants were improperly joined as individuals, is held to be insufficient in law upon the face thereof.

9. The allegations contained in the second paragraph added to the defendants' answer by their amendment to answer are held not to constitute a valid defense and to be insufficient in law as a defense upon the face thereof.

10. The plaintiffs have no adequate remedy at law, and have established a cause of action entitling them to relief in this court of equity, and are not debarred from such relief by any acts heretofore performed by them, and do not come into this court of equity with unclean hands.

11. The plaintiffs are entitled to a permanent injunction against defendants in terms and form as in the subjoined judgment and decree.

[fol. 150] FINAL JUDGMENT AND DECREE OF THE TRIAL COURT

It is on this seventh day of November, 1938, Ordered, Decreed and Adjudged as follows:

The defendants Frank Hague individually and as Mayor of Jersey City, Daniel J. Casey, individually and as Director of Public Safety of Jersey City, Harry Walsh, individually and as Chief of Police of Jersey City, the Board of Commissioners of Jersey City, and the agents, servants, employees, deputies, and officers of the defendants and each of them, and all persons associated with or under the direction, supervision or control of the defendants or any of them are hereby perpetually enjoined and restrained:

A. Liberty of the Person

1. From directly or indirectly excluding or removing the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them from the City of Jersey City.

2. From directly or indirectly exercising any personal restraint over the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them except in so far as such personal restraint is in accordance with any right of search and seizure and any right of arrest and removal as speedily as is reasonably possible before a judicial officer under existing law.

3. From directly or indirectly interfering with the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them in their right of free access to and locomotion on the public streets, highways, thoroughfares, parks and places of the City of Jersey City except in so far as such interference is in accordance with any right of search and seizure and any right of arrest and removal [fol. 151] as speedily as is reasonably possible before a judicial officer under existing law.

B. Liberty of the Mind

1. Speaking other than at public meetings:

From directly or indirectly interfering with the plaintiffs or any of them, or the agents, servants or employees

of, or persons acting in sympathy or in concert with the plaintiffs or any of them in their right to communicate their thoughts to other persons in and about the public streets, highways, thoroughfares, parks and places of the City of Jersey City except in so far as such interference is in accordance with any right of search and seizure and any right of arrest and removal as speedily as is reasonably possible before a judicial officer under existing law and except further this paragraph has no bearing upon the right of the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them to speak at public meetings which right is hereinafter dealt with.

2. Circulars, leaflets and handbills:

From interfering directly or indirectly with the plaintiffs or any of them, or the agents, servants, or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them, in the circulation or distribution by them to persons on the public streets, highways, thoroughfares, parks and places of the City of Jersey City of pamphlets, circulars, handbills, emblems or any written or printed matter whatsoever; provided that (1) the said circulars, leaflets and handbills are in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451), and provided (2) that the distribution of the said circulars, leaflets and handbills is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or [fol. 152] littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451).

3. Placards:

From interfering directly or indirectly with the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them, in the carrying of, or the display by them to persons on the public streets, highways, thoroughfares, parks and places of the City of Jersey City, of placards, signs or any written of printed matter whatsoever, whether by walking to and fro with such written or printed matter affixed to their persons, or held in the hands, or

otherwise; provided that (1) the said placards, signs or any written or printed matter whatsoever are in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451) and provided (2) that the distribution of the said placards, signs or any written or printed matter whatsoever is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451).

4. Public Meetings:

(a) From placing any previous restraint upon or in any other manner whatsoever directly or indirectly interfering with the plaintiffs or any of them in respect to the holding of meetings or assemblies in the open air and in parks dedicated for the purposes of the general recreation of the public provided that an application for a permit to hold such meetings by or on behalf of said plaintiffs, or any of them has been made three days in advance of such meetings and provided further that such permit may be refused these plaintiffs or any of them only for the reason that the particular time or place designated in the application is in reasonable conflict with the public recreational purposes of said parks.

[fol. 153] (b) From refusing to or withholding from the said plaintiffs or any of them applications for said permits as hereinabove provided such protection at said meetings or assemblies as is necessary to secure to said plaintiffs or any of them the opportunity to hold such meetings without interference from or interruption by such persons as may be present at said meetings provided only that such protection is reasonably consistent with the ability of the defendants to carry out their obligations in regard to the safety of the residents of Jersey City and provided further that the duty of the defendants to afford such protection to the holding of such meetings or assemblies as may be necessary for their peaceful continuance may be terminated by words or conduct of the plaintiffs or any of them in violation of existing law.

(c) From continuing their heretofore expressed refusal to grant permission to Congressman Maverick, Congressman O'Connell, Congressman Allen and Morris L. Ernst,

and Congressman O'Connell, Roger N. Baldwin, William J. Carney, Al Barkin, Sam Macri and John Kiesler upon applications dated December 17 and 23, 1937, respectively, and from continuation their heretofore expressed refusal to grant those said named speakers all the rights set forth in the preceding two paragraphs of this decree for injunction.

(d) From refusing to the plaintiffs or any of them the rights set forth in the three preceding paragraphs of this decree for injunction in so far as such rights may be sought with respect to public meetings on any of the public streets, highways, thoroughfares or places of the City of Jersey City (other than public parks) and unless and until the defendants acted in their official capacities adopt and enforce the deliberate policy of forbidding meetings of any kind on any of the public streets, highways, thoroughfares or places of the City of Jersey City provided that the rights of the plaintiffs or any of them to hold meetings on the public streets, highways, thoroughfares or places of the City of Jersey City be held subject to a reasonable interpre-[fol. 154] tation by the defendants of the acknowledged easement of public passage over any of the said public streets, highways, thoroughfares or places of the City of Jersey City.

5. Formal:

From ordering, commanding, directing, assisting, aiding or abetting in any manner whatsoever any person to commit or attempt to commit any of the things enjoined by this decree, or not to do anything required by this decree to be done.

ORDINANCES

An Ordinance to regulate the distribution of newspapers, papers, periodicals, books, magazines, circulars, cards and pamphlets.

The Board of Commissioners of the Mayor and Aldermen of Jersey City do ordain:

1. No person shall distribute or cause to be distributed or strewn about any street or public place any newspapers, paper, periodical, book, magazine, circular, card or pamphlet.

2. No person shall distribute or cause to be distributed to the occupants of any house, place or cause to be placed into any areaway, in front of, or along the side of any house, or upon the doorstep thereof any newspaper, paper, periodical, book, magazine, circular, card or pamphlet, unless the same has been previously ordered by the person in actual occupation of the house, in the areaway of which, in front of which, or along the side or doorsteps of which said newspaper, paper, periodical, book, magazine, circular, card of pamphlet shall *shall* be distributed or placed.

3. Any person violating or causing to be violated, or consenting to, or permitting the violation of any of the provisions of this ordinance shall, upon conviction thereof, be liable or subject to a fine of not exceeding Ten ($10.00) Dollars, or imprisonment for a period of not exceeding ten [fol. 155] (10) days in the city prison or the county jail, in accordance with the statutes in such cases made and provided, or both, for the first offense, and a fine of Twenty-five ($25.00) Dollars or imprisonment not exceeding thirty (30) days, or both, for each and every subsequent offense.

4. Any complaint regarding the violation of any of the provisions of this ordinance shall be cognizable before the Police Courts of this City.

5. This ordinance shall take effect immediately.

Michael I. Fagen, Wm. B. Quinn, John Saul, A. Harry Moore, Frank Hague, Commissioners.

Passed January 22, 1924. Edward J. Holland, City Clerk.

An Ordinance to preserve public peace and good order, and to prevent riots, disturbances and disorderly assemblage.

The Board of Commissioners of Jersey City Do Ordain:

1. From and after the passage of this ordinance, no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety.

2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and public assembly, upon application made to him at least three days prior to the proposed parade or public assembly.

3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of [fol. 156] all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

4. Any person or persons violating any of the provisions of this ordinance shall upon conviction before a police magistrate of the City of Jersey City be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County jail for a period not exceeding ninety days or both.

5. This ordinance shall take effect upon its final passage.

Introduced April 1st, 1930.
Adopted April 15th, 1930.
John Begagns, Michael I. Fagen, Arthur Potterton, William B. Quinn, Frank Hague, Commissioners.

Dated, City Clerk's Office, Jersey City, April 21st, 1930.
Edward J. Holland, City Clerk.

[fol. 157] IN UNITED STATES CIRCUIT COURT OF APPEALS

DISSENTING OPINION

DAVIS, dissenting:

It is with regret that I feel constrained to dissent in part from the conclusions of my colleagues.

The first conclusion from which I dissent is that of the question presented by this appeal. They say that it is "whether or not certain fundamental civil liberties safeguarded by the Constitution of the United States shall be observed and protected in Jersey City or shall there stand abridged". This statement "begs the question". It assumes that what the defendants, speaking of the parties as they stood in the District Court, did in Jersey City constituted an abridgment of these "fundamental civil liberties" and the only question would then be whether or not they should stand abridged in Jersey City and not elsewhere. The mere statement of that question answers itself. The

question, as I see it, is whether or not what the defendants did in Jersey City deprived the plaintiffs of any rights to which they were entitled under the Constitution of the United States. The answer to this question depends upon two further questions.

The first one is whether or not the ordinance, pursuant to which the permits were denied, is constitutional and if it is, the second question is whether or not the Director of Public Safety in denying the permits abused the discretion and authority which the ordinance vests in him.

The decree is divided into two parts: A., "Liberty of the Person", and B., "Liberty of the Mind". The substance of the restraints contained in the decree follows:

Under A., the Court enjoined the defendants:

1. From excluding or removing the plaintiffs, which includes in this decree, their agents, servants, employees and persons acting in sympathy and concert with them, from Jersey City;

2. From exercising any personal restraint over the plaintiffs except so far as such restraint is in accordance with any right of search and seizure and any right of arrest and [fol. 158] removal as speedily as is reasonably possible before a judicial officer under existing law, and

3. From interfering with plaintiffs in their right of free access to and locomotion on the public streets, highways, thoroughfares, parks and places of Jersey City except in so far as such interference is in acordance with any right of search and seizure, etc. as stated in No. "2" above.

There is no serious objection, as I understand it, to this part of the decree if it is construed not to interfere with what is generally accepted everywhere as legitimate work of police officers and detectives.

Under B., the court enjoined the defendants:

1. From interfering with the plaintiffs in their right to communicate their thoughts to other persons in and about the public streets, highways, thoroughfares, parks and places of Jersey City except in so far as such interference is in accordance with any right of search and seizure, etc. as stated above, except that this paragraph has no bearing upon the right of the plaintiffs to speak at public meetings;

2. From interfering with the plaintiffs in the circulation or distribution by them in the public streets, etc. of Jersey

City of pamphlets, circulars, handbills, or any written or printed matter whatsoever; provided that the circulars, pamphlets, etc. are in no respect "obscene, offense to public morals or an advocacy of unlawful conduct" and "that their distribution is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants or the misuse or littering of the streets * * *";

3. From interfering with the plaintiffs in carrying or displaying on the public streets, etc. of Jersey City placards, signs or any written or printed matter whatsoever; provided such matter is not obscene or against public morals and that the carrying of the placards is orderly and without molestation to the inhabitants of Jersey City and without littering the streets, etc.

[fol. 159] The decree is in these three respects, under "B.", proper and there is no real objection so far to it. The learned trial judge devoted only a small part of his opinion to the decree up to this point. The real contest in this case is concerned with B. 4. (a), (b), (c) and (d) in which the court enjoined the defendants as follows:

"4. Public Meetings:

(a) From placing any previous restraint upon or in any other manner whatsoever directly or indirectly interfering with the plaintiffs or any of them in respect to the holding of meetings or assemblies in the open air and in parks dedicated for the purposes of the general recreation of the public provided that an application for a permit to hold such meetings by or on behalf of said plaintiffs or any of them has been made three days in advance of such meetings and provided further that such permit may be refused these plaintiffs or any of them only for the reason that the particular time or place designated in the application is in reasonable conflict with the public recreational purposes of said parks.

(b) From refusing to or withholding from the said plaintiffs or any of them applications for said permits as hereinabove provided such protection at said meetings or assemblies as is necessary to secure to said plaintiffs or any of them the opportunity to hold such meetings without interference from or interruption by such persons as may be present at said meetings provided only that such pro-

tection is reasonably consistent with the ability of the defendants to carry out their obligations in regard to the safety of the residents of Jersey City and provided further that the duty of the defendants to afford such protection to the holding of such meetings or assemblies as may be necessary for their peaceful continuance may be terminated by words or conduct of the plaintiffs or any of them in violation of existing law.

[fol. 160] (c) From continuing their heretofore expressed refusal to grant permits to Congressman Maverick, Congressman O'Connell, Congressman Allen and Morris L. Ernst, and Congressman O'Connell, Roger N. Baldwin, William J. Carney, Al Barkin, Sam Macri and John Kiesler upon applications dated December 17 and 23, 1937, respectively, and from continuation of their heretofore expressed refusal to grant those said named speakers all the rights set forth in the preceding two paragraphs of this decree for injunction.

(d) From refusing to the plaintiffs or any of them the rights set forth in the three preceding paragraphs of this decree for injunction in so far as such rights may be sought with respect to public meetings on any of the public streets, highways, thoroughfares or places of the City of Jersey City (other than public parks) and unless and until the defendants acting in their official capacities adopt and enforce the deliberate policy of forbidding meetings of any kind on any of the public streets, highways, thoroughfares or places of the City of Jersey City provided that the rights of the plaintiffs or any of them to hold meetings on the public streets, highways, thoroughfares or places of the City of Jersey City be held subject to a reasonable interpretation by the defendants of the acknowledged easement of public passage over any of the said public streets, highways, thoroughfares or places of the City of Jersey City."

The ordinance * and the so-called "Home Rule" statute of New Jersey, pursuant to which the ordinance was passed, [fol. 161] are grounded upon the assumption that the streets and parks of Jersey City belong exclusively to the state

* "1. From and after the passage of this ordinance, no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jer-

and it or the city, in so far as it has been authorized by the state to do so, may say whether or not parades or public meetings may be held on the streets or in the parks and under what conditions. That Jersey City has such authority has been settled in the courts of New Jersey, of Massachusetts, of Pennsylvania, of Illinois and of other states, and in the federal courts.

In Burlington v. Pennsylvania R. R. Co., 56 N. J. E. 259, 261, the court said:

"It is of course true that the public right, so far as it is concerned, is subject to the legislative control over streets. As to the public, the legislature can authorize the abandonment of a street in toto, or turn it in part over to a private enterprise. It may, therefore, legalize the operation of a steam railroad transversely or longitudinally over or along a highway. The legislative authority, however, must appear either in express terms or must flow as a necessary implication from powers expressly granted. State v. Warren Railroad Co., 5 Dutch. 353; Newark v. Delaware, Lackawanna and Western Railroad [fol. 162] Co., 15 Stew. Eq. 196; Hoboken Land and Improvement Co. v. Hoboken, 6 Vr. 295. The grant of power may be made directly by the legislature or it may be delegated to the government of a municipality. It may be con-

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sey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety.

2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and public assembly, upon application made to him at least three days prior to the proposed parade or public assembly.

3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

4. Any person or persons violating any of the provisions of this ordinance shall upon conviction before a police magistrate of the City of Jersey City be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County Jail for a period not exceeding ninety days or both."

tained in the charter of a city, in the charter of a railroad or in a general statute."

In Harwood v. Trembly, 97 N. J. L. 173, 175; 116 Atl. 430, 431, Chief Justice Gummere declared the law as follows:

"The streets of a city are common highways, primarily designed for the use of the public in passing and repassing and in such temporary occupancy as is incidental to the exercise of those rights. No one is justified in obstructing a public street by collecting therein a large assemblage of people for the purpose of delivering an address to them. The common highways of the state are not designed for the purpose of holding public meetings therein, and anyone who attempts to do this, without having first obtained permission from the public authorities in charge of such highways, commits a public nuisance. The constitutional guaranty of liberty of speech no more authorizes a citizen to appropriate to his own use the public property of a community for the purpose of exercising that guaranty than it permits him to occupy in invitum the private property of a fellow citizen for the same purpose. In order to protect the public in the full enjoyment of the city streets, the municipal authorities are clothed with the power of seeing that such enjoyment is not unnecessarily interfered with, and, in the exercise of that power, to take all reasonable steps to prevent such interferences."

In the case of Thomas v. Casey, 121 N. J. L. 185; 1 Atl. (2) 866, 870, Mr. Justice Bodine, in an able and well-reasoned opinion said:

"He (Thomas) has no more right to speak in public places in that city, such as highways and parks, without [fol. 163] permit than he has to invade a citizen's home without invitation."

In Commonwealth v. Davis, 162 Mass. 510, in which Davis spoke on the Boston Common without a permit in violation of a city ordinance, Mr. Justice Holmes said:

"There is no evidence before us to show that the power of the legislature over the common is less than its power over any other park dedicated to the use of the public or over public streets, the legal title to which is in a city or town. Lincoln v. Boston, 148 Mass. 578, 580. As representative

of the public, it may and does exercise control over the use which the public may make of such places, and it may and does delegate more or less of such control to the city or town immediately concerned. For the legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house."

In reviewing that case, (Davis v. Massachusetts, 167 U. S. 43) hereinafter called the Davis case, on appeal to the Supreme Court of the United States, Mr. Justice White affirmed the Massachusetts court as follows:

"It is, therefore, conclusively determined that there was no right in the plaintiff in error to use the common except in such mode and subject to such regulations as the legislature in its wisdom may have deemed proper to prescribe. The Fourteenth Amendment to the Constitution of the United States does not destroy the power of the States to enact police regulations as to the subjects within their control, Barbier v. Connolly, 113 U. S. 27, 31; Minneapolis & St. Louis Railway Co. v. Beckwith, 129 U. S. 26, 29; Giozza v. Tiernan, 148 U. S. 657; Jones v. Brim, 165 U. S. 180, 182, and does not have the effect of creating a particular and [fol. 164] personal right in the citizen to use public property in defiance of the constitution and laws of the State.

* * * * * * *

"The right to absolutely exclude all right to use, necessarily includes the authority to determine under what circumstances such use may be availed of, as the greater power contains the lesser. The finding of the court of last resort of the State of Massachusetts being that no particular right was possessed by the plaintiff in error to the use of the common, is in reason, therefore, conclusive of the controversy which the record presents, entirely aside from the fact that the power conferred upon the chief executive officers of the city of Boston by the ordinance in question may be fairly claimed to be a mere administrative function vested in the Mayor in order to effectuate the purpose for which the common was maintained and by which its use was regulated."

This case has been followed in many inferior federal courts. Mutual Film Co. v. Industrial Commission of Ohio, 215 Fed. 138; Lutz v. City of New Orleans, 235 Fed. 978; Community Chautauquas v. Caverly, 244 Fed. 893; Lane v. Whitaker, 275 Fed. 476; Buck v. Kuykendall, 295 Fed. 197; Capital Taxicab Co. v. Cermak, 60 Fed. (2d) 608; Sullivan v. Shaw, 6 Fed. Supp. 112.

The specific point here presented was absolutely settled in the Davis case and if the law there declared is still the law, it is conclusive of the issues here involved and the District Court and this court have overruled the Supreme Court. This they both seek to avoid in two ways:

They say that the case at bar can be distinguished from the Davis case and that in any event the Supreme Court in later cases has "modified" the law there announced.

They seek to distinguish this case from the Davis case by the fact that in that case no application was made for a [fol. 165] permit, but in this case there was. This is a "distinction without a difference". The Supreme Court thought so little of the fact that no application was made in the Davis case that it did not even mention that fact, but discussed the questions on their merits and declared the law. If the ordinance in the Davis case was void, it was void on its face and Davis with or without an application was entitled to test its validity, Lovell v. Griffin, 303 U. S. 444, 552, and this he did.

The attempted distinction does not avoid the difficulty which this court had in trying to get around the Davis case and so it says that the law declared in that case has been "modified" in later decisions of the Supreme Court. The majority opinion shows that by "modified" is meant changed, overruled. The opinion in the Davis case was delivered more than forty years ago and no other court has found that the law has been "modified" or in any way changed, but every court, state and federal, which has considered the identical question sub judice has relied upon that case for the law there announced.

This court says that the Davis case has been "modified" by the cases of Gitlow v. New York, 268 U. S. 652; Fiske v. Kansas, 274 U. S. 380; De Jonge v. Oregon, 299 U. S. 353; Near v. Minnesota, 283 U. S. 697; Lovell v. Griffin, 303 U. S. 444. A case is "modified", changed or overruled expressly or by necessary implication.

There is not a line, word or even a hint, in those cases expressly modifying, changing or overruling the Davis case and I do not think that they have done so by necessary implication.

To repeal a statute or overrule a decision by implication is an unpopular doctrine and it is not usually done. The recent references to the Davis case by the Supreme Court indicate that the law as there laid down still stands and has not been "modified". Packard v. Banton, 264 U. S. 140, 145; Title Co. v. Wilcox Building Corporation, 302 U. S. 120, 128. It is true that the issue in these cases was not [fol. 166] abridgment of the freedom of speech, but the Davis case was cited as authority for the law they were declaring without a hint or an implication that the doctrine of that case had been "modified".

In the Gitlow case, Gitlow was indicted, tried and convicted for criminal anarchy which advocates the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or executive officials thereof. The defendant contended that the statute against criminal anarchy was in contravention of the due process clause of the Fourteenth Amendment. The Supreme Court affirmed the judgment and in its opinion said:

"That utterances inciting to the overthrow of organized government by unlawful means, present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion, is clear. Such utterances, by their very nature, involve danger to the public peace and to the security of the State. They threaten breaches of the peace and ultimate revolution. And the immediate danger is none the less real and substantial, because the effect of a given utterance cannot be accurately foreseen. The State cannot reasonably be required to measure the danger from every such utterance in the nice balance of a jeweler's scale. A single revolutionary spark may kindle a fire that, smouldering for a time, may burst into a sweeping and destructive conflagration. It cannot be said that the State is acting arbitrarily or unreasonably when in the exercise of its judgment as to the measures necessary to protect the public peace and safety, it seeks to extinguish the spark without waiting until it had enkindled the flame or blazed into the conflagration. It cannot reasonably be required to defer

the adoption of measures for its own peace and safety until the revolutionary utterances lead to actual disturbances of the public peace or imminent and immediate danger [fol. 167] of its own destruction; but it may, in the exercise of its judgment, suppress the threatened danger in its incipiency. In People v. Lloyd, supra, p. 35, it was aptly said: 'Manifestly, the legislature has authority to forbid the advocacy of a doctrine designed and intended to overthrow the government without waiting until there is a present and imminent danger of the success of the plan advocated. If the State were compelled to wait until the apprehended danger became certain, then its right to protect itself would come into being simultaneously with the overthrow of the government, when there would be neither prosecuting officers nor courts for the enforcement of the law.'

"We cannot hold that the present statute is an arbitrary or unreasonable exercise of the police power of the State unwarrantably infringing the freedom of speech or press; and we must and do sustain its constitutionality."

The judgment of conviction was affirmed and instead of modifying the law of the Davis case, this case rather affirms it.

Fiske v. Kansas, 274 U. S. 380, 387, was a case in which Fiske was indicted, tried, convicted and sentenced for violating the statute of Kansas against Criminal Syndicalism which is defined as the doctrine that advocates crime, physical violence, arson, destruction of property, sabotage, or other unlawful acts or methods as a means of effecting industrial or political ends, or as a means of effecting political revolution.

All that was proved against Fiske was that he solicited and secured members in an organization which it was charged violated the Criminal Syndicalism Act. The court said:

"The result is that the Syndicalism Act has been applied in this case to sustain the conviction of the defendant, without any charge or evidence that the organization in which [fol. 168] he secured members advocated any crime, violence or other unlawful acts or methods as a means of effecting industrial or political changes or revolution. Thus applied the Act is an arbitrary and unreasonable exercise of the police power of the State, unwarrantably infringing

the liberty of the defendant in violation of the due process clause of the Fourteenth Amendment."

In other words, Fiske was convicted without any evidence whatever to establish the crime of which he was charged and convicted. It was held that this violated the due process clause of the Fourteenth Amendment.

Near v. Minnesota, 283 U. S. 697, involved a suit to suppress a newspaper for criticising certain public officials for the alleged prevalence and protection of crime, on the ground that the criticism was "malicious, scandalous and defamatory". The court held that under the circumstances of that case previous restraint of publications, was an infringement of the liberty of the press guaranteed by the Fourteenth Amendment, but the libeler remained civilly and criminally responsible for his libel.

In the case of DeJonge v. Oregon, 299 U. S. 353, DeJonge was indicted, tried and convicted for violating the Criminal Syndicalism Law of Oregon for assisting in the conduct of a meeting which was called "under the auspices of the Communist Party, an organization advocating criminal syndicalism."

At the trial DeJonge moved for the direction of acquittal on the ground that the statute as applied to him for merely assisting at a meeting of the Communist Party at which nothing unlawful was done or advocated, violated the due process clause of the Fourteenth Amendment. The motion was denied and he was convicted.

The offense for which DeJong was convicted and sentenced to imprisonment for seven years was assisting in the conduct of a meeting which was orderly and in which no unlawful act was advocated or committed. His apparent, [fol. 169] sole offense was that he took part in a meeting held under the auspices of the Communist Party.

On appeal, the Supreme Court said:

"It follows from these considerations that, consistently with the Federal Constitution, peaceable assembly for lawful discussion cannot be made a crime. The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings, cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting

is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects."

In Lovell v. Griffin, 303 U. S. 444, Alma Lovell was convicted in the Recorder's Court of the City of Griffin, Georgia, and was sentenced to imprisonment for fifty days in default of the payment of a fine of fifty dollars for distributing a pamphlet and magazine in the nature of religious tracts without securing a permit, in violation of a city ordinance which provided that the distribution of circulars, handbooks, advertising, or any other kind of literature without first obtaining written permission from the City Manager was a nuisance and punishable as an offense against the City. The Superior Court of the County refused a review and the Supreme Court of Georgia denied an application for certiorari.

There was no restriction in the application of the ordinance with respect to time and place. "It is not limited to ways which might be regarded as inconsistent with the maintenance of public order or as involving disorderly conduct, the molestation of the inhabitants or the misuse or littering of the streets." The court held that, "Whatever the motive which induced its adoption, its character is such that it [fol. 170] strikes at the very foundation of the freedom of the press by subjecting it to license and censorship".

The cases of Near v. Minnesota, supra; DeJonge v. Oregon, supra, and Lovell v. Griffin, supra, more nearly resemble the case at bar than any of the others. The contentions made in them were direct challenges to the rights safeguarded and guaranteed by the Fourteenth Amendment and the conclusions reached by the Supreme Court were inevitable. The Minnesota case was a plain attempt to suppress a newspaper because it criticised public officers for alleged protection of corruption. The DeJonge case was nothing more than an attempt to punish a citizen by imprisonment for seven years for assisting in the conduct of a peaceful, orderly and lawful meeting held under the auspices of the Communist Party. The Lovell case was an attempt to punish a person for distributing religious tracts which set forth the tenets of her faith.

These cases and the statutes or ordinances, under which they were brought are a long way from the case at bar. The ordinance here under consideration was passed for self

protection and self preservation. As Chief Justice Hughes said in the Gitlow case, "the State is primarily the judge of regulations required in the interest of public safety and welfare". The passage of the ordinance by Jersey City was state action, Lovell v. Griffin, supra, and its adoption was the promulgation of regulations which the state of New Jersey judged to be required in the interest of the public safety and welfare of its people. It was adopted for the express purpose of preventing riots, disturbances and disorderly assemblage and this the city and state had the right to do. The right of self-preservation is an inherent function of government. "In maintaining this guaranty (of the fundamental rights of person and property) the authority of the State to enact laws to promote the health, safety, morals and general welfare of its people is necessarily admitted." Near v. Minnesota, supra. Any interference with freedom of speech or of the press was incidental. As Chief [fol. 171] Justice Hughes said in the DeJonge case, if the rights of free speech and peaceable assembly are to be preserved, the question is not as to the auspices under which a meeting is held, but as to its purpose. No case has been cited holding that an ordinance passed for the safety, protection and welfare of a city, when properly administered, is unconstitutional. The cases upon which the majority opinion rests for a modification of the law declared in the Davis case, do not even mention that case. In the DeJonge case, the Chief Justice said: "None of our decisions go to the length of sustaining such a curtailment of the right of free speech and assembly as the Oregon statute demands in its present application". The decision in the Davis case must be included in "our decisions" mentioned in the DeJonge case. Accordingly when the Jersey City ordinance is properly applied, it does not curtail the right of free speech and free assembly within the meaning of the Constitution of the United States and the decisions of the Supreme Court.

The next question is whether or not the Director of Public Safety of Jersey City abused the authority vested in him by the ordinance in denying permits to the plaintiffs. In order to determine this question it is necessary to know and consider at least some of the facts and circumstances surrounding his refusal. Of course, he must faifly investigate all the facts and circumstances pertinent to an application and must honestly "believe it to be proper to refuse the is-

suance" of a permit "for the purpose of preventing riots, disturbances or disorderly assemblage" or some of them. The facts and circumstances must be sufficient to enable a reasonable man to come to that belief before he may refuse.

The plaintiffs informed the Director that Roger N. Baldwin, among others, was to speak at the meeting for which they sought a permit. Their application had been given wide publicity and a great deal of agitation and excitement had arisen over this and the proposed "invasion" of Jer- [fol. 172] sey City by the plaintiffs and others who were associated with them. Thereupon the following letter was written to the Director:

"Committee of Veterans of Jersey City,

921 Bergen Avenue,

Jersey City, N. J. December 27, 1937.

Hon. Daniel Casey, Department of Public Safety, Jersey City, N. J.

DEAR COMMISSIONER:

We understand from the newspapers that there is pending before you now an application for a permit to hold an open air public meeting in this City.

Among the speakers listed for the meeting is one Roger N. Baldwin, whose record was published in this afternoon's newspapers. In that record we find a conviction by a United States Court for draft dodging and a prison sentence of one year in the Essex County Penitentiary. We consider any man convicted of this crime to be thoroughly Un-American in his principles and unworthy of receiving any consideration at the hands of the City Officials, at least to the extent of granting him permission to speak in this City at a public meeting.

We hereby protest against the granting of the permit to Roger N. Baldwin, or to any members of the Un-American group he represents, irrespective of what they claim to be the purpose of their meeting. We demand that you withhold action on this application.

The reason for requesting delay is that we wish to assemble in a body at the Jersey City Armory on Tuesday, tomorrow evening, in order that we may prepare and have adopted by the full membership of all the Veterans' Or-

ganizations in Jersey City, resolutions of protest against allowing this "slacker" or any of his type, to appear publicly [fol. 173] in Jersey City, whose citizens are devoted to American principles and the upholding of our American Constitution.

Please give us a prompt answer to this letter.

Very truly yours, Davis A. Nimmo, Past Commander, Hudson County, Amer. Legion. Charles A. Peterson, Past State Commander, V. F. W. Louis F. J. Borgers, Commander, Quinn Post, American Legion. William E. Malinka, American Legion. Hugh A. Kelly, Commander, Jersey City Post, Amer. Legion. George A. Reilly, Adjutant, Jersey City Post A. L."

More than three thousand veterans of Jersey City met the next day, December 28, 1937, and passed a resolution which they sent to the Director. Among those present were representatives of the American Legion, Veterans of Foreign Wars, Catholic War Veterans, Jewish War Veterans, Irish War Veterans, Polish American War Veterans, Italian War Veterans, Disabled War Veterans, Reserve Officers Association, Marine Corps League, Veterans of Three Wars, United Spanish American War Veterans.

The resolution reads in part as follows:

"Whereas, in his testimony before the Fish Congressional Committee he (Roger N. Baldwin) did testify that force, violence and murder may be resorted to for the overthrow of government, his testimony being as follows:

The Chairman: Does your organization uphold the right of a citizen or alien—it does not make any difference which—to advocate murder?

[fol. 174] Mr. Baldwin: Yes.

The Chairman: Or assassination?

Mr. Baldwin: Yes.

The Chairman: Does your organization uphold the right of an American citizen to advocate force and violence for the overthrow of the Government?

Mr. Baldwin: Certainly, in so far as mere advocacy is concerned.

The Chairman: Does it uphold the right of an alien in this country to urge the overthrow and advocate the overthrow of the government by force and violence?

Mr. Baldwin: Precisely on the same basis as any citizen.

The Chairman: You do uphold the right of an alien to advocate the overthrow of the government by force and violence?

Mr. Baldwin: Sure; certainly. It is the healthiest kind of thing for a country, of course, to have free speech—unlimited.

Whereas, the same Roger N. Baldwin is now the leading advocate of the C. I. O. movement; and

Whereas, the C. I. O., in permitting this man to be its spokesman stands accused of condoning his Un-Americanism and Communistic leanings, and the C. I. O. should be condemned for its Un-American tactics, * * *

* * * * * * * * *

* * * "Now, Therefore, Be it * * *

Resolved that we request the said Daniel Casey, Director of Public Safety, to refuse and deny the application made for such a permit, and be it Further

[fol. 175] Resolved, that we now record our firm opposition and protest against allowing this slacker and his Communistic associates to appear publicly in Jersey City, whose citizens are devoted to American principles and the upholding of our American traditions, and be it Further

Resolved, that we consider a man convicted of the crime of evading the draft to be thoroughly Un-American in his principles and uworthy of receiving any consideration at the hands of public officials, especially the right to speak from a public platform in the streets of Jersey City, and that we also consider that any organization which permits this man to be associated with them is also unworthy of any consideration on the part of public officials and they should not be given the right to use our public streets for the purpose of spreading Communistic and Un-American doctrines" * * *.

Local unions affiliated with the American Federation of Labor and many others sent additional protests to the Director.

The plaintiffs had been trying for some time to secure permits to hold public meetings in Jersey City at which Norman Thomas, Roger N. Baldwin and others were to speak. Many newspapers circulated in Jersey City contained statements

of an intended "invasion" of Jersey City by the C. I. O. For instance, the following appeared in the Newark Evening News, the largest newspaper in New Jersey and one of the most reliable in the country:

"C. I. O. Prepared
For Invasion
Mass Drive by 3,000 to Be
Launched Monday in
Jersey City

Final plans for their invasion of Jersey City were completed last night by New Jersey C. I. O. leaders. A mass or- [fol. 176] ganization drive by 3,000 C. I. O. representatives will be launched Monday afternoon as workers leave plants in the downtown area of the city.

Aside from field organizers of international unions, more than 28,000 volunteers will distribute leaflets in an area bounded by Bay and 17th Streets, Jersey City. Of that number more than 2,000 will be from the International Maritime Union.

Other organizations which will send groups include the Civil Liberties Union, International Labor Defense, Workers Defense League and the Hudson County Committee for Civil Rights.

Many Arrests Expected

Those participating in the drive will assemble in Jersey City at a given point. They will then march to the city's largest plants where leaflets will be handed out. Many arrests are expected in view of the city's ordinance prohibiting distribution of leaflets.

William J. Carney, C. I. O. regional director and leader of the drive, will go to Washington tomorrow to confer with a member of the Senate Civil Liberties Committee. Carney said a member of the committee will be in Jersey City Monday as an observer.

"Showdown with Hague"

Carney added:

"Our plans for a showdown between C. I. O. and I-Am-The-Law-Hague have been completed. We will go to Jersey City to organize in a peaceful manner. Whether this

will be possible in the face of denials of civil rights in that city I am unable to say at this time.

"Workers in Hudson County have even been denied the right to strike. Police of Jersey City have tried to stop picketing without a court injunction, so easily obtained in Hudson County.

[fol. 177] "When our organizers enter Jersey City they are stopped by police, threatened and searched. The contents of their cars are strewn over the highway. At our organization meetings police even threaten the workers *wot* attend. Hague has gotten away with this too long.

"The Acts of various Jersey City officials may very well come within the scope of prosecution and indictment by the Federal Government. Various acts committed by Jersey City officials are crimes under the United States Criminal Code, punishable by a heavy fine and imprisonment up to ten years.

"Section 51 of the code prohibits conspiracy to injure persons in exercise of civil rights. Section 7 of the Wagner Act says employees shall have the right to join or assist labor organizations and to engage in concerted activities for mutual aid and protection.

"Hague may be the law in Jersey City, but he is not the law of the country."

The plaintiffs now say that these accounts were only headlines and no such numbers invaded Jersey City as the papers stated. However that may be, it might be pertinent to ask who was responsible for the headlines and statements, for such papers as the Newark Evening News are not in the habit of publishing unreliable information and the Director did not and could not know what was going to happen for it evidently was not he who informed the newspapers of the reported "invasion". He was justified in believing and seriously considering what such newspapers said.

The newspapers circulated in Jersey City at this time carried pictures of Norman Thomas and other socialists and communists at the May Day Celebration in New York City giving the communistic clenched-fist salute and singing the Internationale.

[fol. 178] These things show only in part what was going on in and about Jersey City. All of this had the tendency to excite and doubtless did excite, incite and inflame the people of Jersey City and especially the veterans. The

Director had a serious situation with which to contend. The responsibility rested upon him. He was urged on every hand to refuse the permit under threatened violence. Finally after investigating the facts and circumstances pertinent to the application, he wrote the following letter, on December 30, 1937, to the attorney of the plaintiffs refusing the permit.

"Department of Public Safety,

City Hall,

Jersey City, N. J.

December 30, 1937.

Spaulding Frazer, Esq., 744 Broad Street, Newark, New Jersey

DEAR SIR:

I hereby answer your letter of December 23, 1937, addressed to me as Director of Public Safety, in which you make application for a permit to hold on open air meeting in Jersey City, which meeting will, according to you, be addressed by Congressman Jerry O'Connell, Roger N. Baldwin, William J. Carney, Al. Barkin, Sam Macri and John Kiesler.

On receipt of your letter, I sent you a communication, dated December 27, 1937, in which I informed you that I would, as required by ordinance, make prompt investigation of all of the facts and circumstances pertient to your application before deciding whether to grant or refuse the issuance of the permit requested. On the same day, December 27, 1937, I received a communication written on behalf of certain Veterans' organizations of Jersey City, protesting against the granting of a permit to Roger N. Baldwin or to any members of the group he represents, to hold a meeting. The letter demanded that I withhold action on [fol. 179] your application. I attach a copy of the Veterans' letter to this communication.

On the evening of December 28, 1937, a great mass meeting was held in the Armory at Jersey City, attended by over three thousand persons, all of whom were veterans. At that meeting, a resolution of opposition was passed against the granting of the permit. Violent disorder was threatened on the part of the veterans in case the meeting

was held. Announcements were made from the floor—and these announcements had the approval of the meeting—that if I should refuse to honor the Veterans' protest and grant a permit for the meeting, the Veterans would take the matter into their own hands and see to it that the meeting would be broken up. I refer you to copies of the local papers of Jersey City, which give an account of this meeting. I also enclose a copy of the resolution passed by the Veterans at the meeting. . .

The Chamber of Commerce, representing the business interest of Jersey City, have gone on record against the granting of this permit.

The Central Labor body of Hudson County has gone on record against the granting of this permit.

Other bodies of citizens have opposed it, and individuals of influence in the community have protested to me against the holding of the meeting. Other facts and circumstances pertinent to your meeting, in addition to those herein called to your attention, convince me that the granting of the permit you request would lead to riots, disturbances and disorderly assemblage.

Therefore, I hereby refuse to issue the permit for an open air meeting requested by you in your letter of December 27, 1937, and my refusal is for the purpose of preventing riots, disturbances and disorderly assemblage.

Very truly yours, Daniel Casey, Director."

[fol. 180] The refusal of the permit was a ministerial act on the part of the Director and unless he grossly abused the discretion and authority which the ordinance vested in him, his action should not be reversed and the judgment of the court substituted for his. Gaines v. Thompson, 74 U. S. 347; Ness v. Fisher, 223 U. S. 683; Louisiana v. McAdoo, 234 U. S. 627, 633; Work v. Rives, 267 U. S. 175, 183; Proctor & Gamble Co. v. Coe, 96 Fed. (2d) 518, 520.

The Supreme Court of New Jersey found in the Thomas case, supra, that he had not abused his discretion or authority. Mr. Justice Bodine who wrote the opinion in that case said, "The Director of Public Safety knows the temper of the people he serves". He represented Jersey City and if a riot, disturbance or disorderly assemblage had resulted from the granting of the permit the city would have been responsible. The Statute of New Jersey on this subject provides that:

"Any person who, by reason of mob violence as defined and stated in sections 2:152-1 to 2:152-3 of this title, suffers material damage to his property or injury to his person shall have an action against the city in which such damage is suffered or injury inflicted, or, if not in a city, then against the county in which such damage is suffered or injury inflicted for such damages as he may sustain, to an amount not exceeding five thousand dollars." Revised Statutes of New Jersey, 2:63-10 7.

Under similar statutes or ordinances, municipalities in many states have been held liable for large damages caused by mobs, riots and disorderly assemblages. Right now the Apex Hosiery Company is suing the City of Philadelphia for more than $3,000,000 damages resulting from riots, disturbances or disorderly assemblage. In honestly administering this ordinance, who could say with any degree of certainty that as the result of the issuance of the permit in question, a mob, riot or disorderly assemblage would not [fol. 181] have occurred and that considerable damage to persons or property or both would not have been done. Whose judgment under these circumstances was to be followed, the Director's, the District Court's or this court's? The ordinance says the Director's. The Supreme Court of New Jersey said the Director's. The Supreme Court of the United States in the Davis case said the Director's and every other court in the country which has considered the question under similar ordinances and circumstances, has said the Director's and not the court's.

I have not forgotten that the plaintiffs charged that the officials of Jersey City influenced and intimidated the owners of private halls against the plaintiffs so that they would not rent them for meetings; and further that they incited and stirred up the various organizations to protest against granting permits for public meetings. All of this the defendants denied.

The learned trial judge who saw all the witnesses and was in the atmosphere of the trial for weeks refused to find that the evidence sustained the charge that the officials of Jersey City influenced and intimidated the owners of private halls. He also refused to find that they or any of them had incited or stirred up the people to protest. Yet this court, in effect overruling the learned trial judge, and in the face of the statement of counsel for the plaintiffs, when

arguing this case, that Mayor Hague was one of the most honest witnesses he had ever seen on the stand, found that the defendants, notwithstanding the Mayor's denial, "endeavored to build up a dangerous situation, one in which sympathizers of the appellees could not safely speak" though it had never seen or heard a single witness testify.

Thousands of permits, we are told, were issued in the past, but the Director refused to issue a permit to plaintiffs. This alone shows discrimination in the opinion of this court, but this is a non sequitur. The facts and circumstances under which a meeting is to be held determine whether a permit should be issued or refused and whether or not dis- [Fol. 182] crimination has been practiced. The Director may grant one permit and refuse another the same day without denying "any person" "the equal protection of the laws" as required by the Fourteenth Amendment. If the Director had reasonable grounds to believe that the meeting for which he refused a permit would have resulted in riots, disturbances or disorderly assemblage, or any one of these, and that those meeting for which he granted permits would not, his refusal did not discriminate against "any person", or deny to him "the equal protection of the laws".

We do not have in this case the naked question of the right of free speech or free assembly within the meaning of the Constitution of the United States. The issue here is not primarily free speech at all, but the plaintiffs are seeking to make it such. We have here a number of individuals and organizations which have combined and are masquerading under the flag of free speech as though this were the sole issue.

If the primary question here were the maintenance of free speech, the defense of the Constitution of the United States or the principles upon which democracies are founded, can anyone doubt where these protesting organizations—The American Legion, Veterans of Foreign Wars, Hudson County American Legion, and others—would stand? Many of these men have risked their very lives in the service of their country, "to make democracy safe for the world", to defend free speech, the Constitution of the United States and the principles upon which democracies are built.

The defendants contend that the District Court was without jurisdiction in this case. The plaintiffs, on the contrary, say that it has jurisdiction under sections 24 (1) and 24 (14) of the Judicial Code. This was averred in paragraphs 6 and 7 of the bill. It is alleged in paragraph 6 that this is a suit of a civil nature, in equity, arising under the Constitution and laws of the United States, in which the amount in controversy exceeds $3,000 exclusive of interest [fols. 183-184] and costs. This allegation was based upon Title 28 U. S. C. A. section 41 (1), Sec. 24 (1) Judicial Code.

Did the value of the civil rights of which the plaintiffs alleged they were deprived exceed $3,000, exclusive of interest and costs?

There is no allegation as to the value of these rights except the bald statement that they exceed $3,000. Of course, as the majority opinion says, in tort actions, the jury in a proper case, when the damnum is sufficiently laid, may award exemplary damages which may be added to the actual damages suffered in order to make up the jurisdictional amount. Barry v. Edmunds, 116 U. S. 550; Scott v. Donald, 165 U. S. 58, 89. Where the plaintiff in good faith claims the jurisdictional amount in damages, it is sufficient, if not traversed, to give the court jurisdiction. Wiley v. Sinkler, 179 U. S. 58; Smithers v. Smith, 204 U. S. 632. But where the sufficiency of the jurisdictional amount is timely and appropriately challenged, as was done in the case at bar, the plaintiff must support the allegations by competent proof. The burden of establishing the jurisdictional facts is on the plaintiff throughout the litigation. Kvos v. Associated Press, 299 U. S. 269. This the plaintiffs did not do. There is not a word showing the pecuniary value of the rights of which they complain they were deprived and the finding of fact as to this value was a mere guess.

However, I think that the court had jurisdiction under section 24 (14) of the Judicial Code as this court found.

The decree of the District Court should be affirmed as to A. 1 2, and 3 and B. 1, 2 and 3, but reversed as to B. 4 (a) (b), (c) and (d).

A true Copy. Teste:

_____, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

[fol. 185] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1938

No. 6939

FRANK HAGUE, Individually and as Mayor of Jersey City; Daniel J. Casey, Individually and as Director of Public Safety of Jersey City; Harry Walsh, Individually and as Chief of Police of Jersey City, and The Board of Commissioners of Jersey City, Defendants-Appellants,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney, Daniel J. Foley and American Civil Liberties Union, Plaintiffs-Appellees

Appeal from the District Court of the United States, for the District of New Jersey

JUDGMENT—Filed January 26, 1939

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby modified by striking from paragraph B4 (d) thereof the words "and unless and until the defendants acted in their official capacities adopt and enforce the deliberate policy of forbidding meetings of any kind on any of the public streets, highways, throughfares or places of the City of Jersey City" and in all other respects affirmed with costs.

Philadelphia, January 26, 1939.

Albert B. Maris, Circuit Judge.

[File endorsement omitted.]

[fol. 186] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 187] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 6, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.